



STATE OF WASHINGTON
DEPARTMENT OF EARLY LEARNING

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September 21, 2009

TO: Interested Parties

FROM: Andy Fernando, Rules Coordinator
Department of Early Learning

SUBJECT: Concise Explanatory Statement – Regarding:

- Revisions to DEL Child Care Subsidy Rules in WAC Chapter 170-290
- Repeal of WAC Chapter 170-292 Seasonal Child Care

RCW 34.05.325(6) requires the Department of Early Learning (DEL) to prepare a “*Concise Explanatory Statement*” before a proposed rule is filed for permanent adoption. The statement is a public document that:

- Describes DEL’s reason for adopting the rules;
- Notes any differences – other than editing – from the proposed rule to the final rule, and the reasons for those differences; and
- Summarizes all of the issues raised in public comments on the proposed rule during the official comment period, DEL’s responses to those issues, whether the rule was changed as a result, or if the rule was not changed giving reasons why.

Everyone who sent a written comment or testified at a public hearing on the DEL proposed rules will receive the Concise Explanatory Statement. The statement will also be posted on the DEL web site and be sent to anyone who requests it.

A. Reasons for Adopting the Rule

DEL is revising its child care subsidy rules (regulations) for the Working Connections Child Care and Seasonal Child Care programs now located in Washington Administrative Code (WAC) chapters 170-290 and 170-292, respectively. The rules being adopted were proposed on June 3, 2009, filed as *Washington State Register* number [09-12-115](#). When the proposed subsidy rules are adopted as permanent rules, all of the WCCC and SCC subsidy rules will be combined into WAC 170-290. WAC chapter 170-292 is repealed.

Working Connections Child Care (WCCC) helps eligible families receive state-paid child care while the parents work, attend training, or participate in other approved activities. The Seasonal Child Care (SCC) program pays child care for children whose parents work in seasonal agricultural jobs, if the family meets eligibility requirements. Both programs require parents to pay for a portion of the child care cost, known as a copayment.

The current DEL child care subsidy rules were transferred from the Department of Social and Health Services (DSHS) in 2006 when the Legislature created the Department of Early Learning. See section 505 of chapter 265, Laws of 2006 ([2SHB 2964](#)).

All of these child care subsidy rules needed to be updated. Many of the SCC rules have not been updated since 1973. The last WCCC rule revision was in 2005. Neither WAC chapter was written in a way that is easy for parents or child care providers to understand. WAC 170-290 did not reflect how the WCCC program is actually operated, nor did it reflect the current child care subsidy rates. WAC 170-290 and 170-292 contained many obsolete references to DSHS-related laws, rules and program names that need to be changed so the public has accurate information about these programs.

DEL plans to update the child care subsidy rules in phases. Adoption of this current proposal is the first phase. The second phase will begin in late 2009, and is expected to include more substantive rule changes. More modest changes are being made in the first phase, intended to:

- Make the rules clearer and easier to understand;
- Where appropriate, align certain WAC sections with the *Collective Bargaining Agreement* with the Service Employees International Union Local 925 (SEIU). The agreement covers many licensed and non-licensed individuals who provide child care from their home or the home of the child. However, the final rules only include the subsidy payment rates that went into effect on July 1, 2008. The 2009 Legislature did not approve funding for the negotiated child care subsidy rates that were planned to take effect on July 1, 2009.
- Divide WAC 170-290 into three parts:
 1. Part I contains rules that apply to both the WCCC and SCC subsidy programs.
 2. Part II contains requirements that apply to WCCC.
 3. Part III contains requirements that apply only to the SCC program. WAC chapter 170-292 is repealed. (*Note: The repeal takes effect 31 days after the final rules are filed, but WAC 170-292 and repealed sections of WAC 170-290 will continue to appear on the official WAC website for several weeks after the repeal is effective.*)
- Clarify DEL and DSHS roles in the Working Connections Child Care program. Under chapter 265, Laws of 2006, DEL determines WCCC policy including the adoption of these rules. DSHS determines a family's eligibility and authorizes child care based on the rules in Part II of WAC 170-290, and processes subsidy payments to child care providers;
- Clarify the role of SCC contractors. These are local community agencies contracted by DEL to accept family applications for SCC subsidies and to determine parent and child eligibility for SCC-subsidized child care based on the rules in new Part III of WAC 170-290;
- Where appropriate, make WCCC and SCC requirements consistent with each other;

- Make the child care subsidy rules consistent with applicable laws and rules for the federal Child Care and Development Fund; and
- Remove outdated references to DSHS laws, rules, and program names, and replace them with DEL references. Some DSHS references will remain where appropriate.

Please Note: DEL has withdrawn proposed rules for the Seasonal Child Care program that were filed in November 2008, filing number WSR 08-22-102. Comments received on that proposal helped DEL draft the SCC rules as adopted. In section C.2. below, the table summarizes comments received on the November rules and DEL's responses.

Revising and reorganizing the WCCC and SCC rules is expected to make requirements for both programs easier to understand and follow. Making the rules more consistent with federal requirements is expected to help the state retain important federal funding. Making the rules consistent with the child care Collective Bargaining Agreement as approved by the Legislature will reduce confusion about child care subsidy program rules affected by the Agreement. Updating these rules will help DEL better fulfill the Legislature's intent in designating the Department of Early Learning as the Lead Agency for the Child Care and Development Fund to administer child care and early learning programs in the State of Washington.

Rule Development and Public Input.

DEL began drafting changes to the WCCC and SCC rules in 2008. Development of the rule included these steps:

- The WCCC rules were transferred from DSHS WAC 388-290 to DEL WAC 170-290 in March 2008. The SCC rules had been transferred from DSHS WAC 388-292 to DEL WAC 170-292 in July 2006.
- An early draft of WCCC changes was circulated for informal public input in June and July 2008, mainly updating obsolete references to DSHS laws and rules. This draft was withdrawn in fall 2008 as DEL decided to make other clarifying changes to the WCCC rules.
- DEL filed formal proposed Seasonal Child Care rules in WAC 170-292 in November 2008. See *Washington State Register* filings WSR 08-22-102 and 09-01-186. Public hearings were held in December 2008 in Yakima and January 2009 in Mount Vernon, and written comments were also received. Most comments were from individuals and groups concerned about a proposed rule implementing U.S. government guidance requiring verification of citizenship or legal resident status of children applying for or receiving SCC subsidies. A summary of comments on the November 2008 rules is in section C. 2. of this Concise Explanatory Statement. After the public hearings, the department decided to merge the SCC rules with the WCCC rules in WAC 170-292. The proposed SCC rules were withdrawn in April 2009 (WSR 09-10-008), and the revised SCC rules proposed in June 2009 did not include the citizenship or legal status verification requirement.
- Through development of the SCC rules, DEL has kept SCC contractors informed about draft and proposed rule changes. SCC contractors are local community agencies contracted by

DEL who use the rules to determine whether families who apply for SCC benefits are eligible for child care subsidies.

- A preliminary draft of changes to the combined WCCC and SCC rules was circulated for informal public input in March and April 2009. Several comments were received from the public as well as from SEIU and DSHS. The input resulted in some changes to the rules as proposed in June 2009. In some instances, DEL decided not to include changes from the draft rules in the proposed version, pending further discussion in the next phase of rule changes.
- The formal proposal combining the WCCC and SCC rules in WAC 170-290 was filed on June 3, 2009, filing number WSR 09-12-115. Public hearings were held in Tacoma on July 7, 2009, and in Yakima on July 11. No testimony was offered at either hearing, and no one from the public attended either hearing. However, we received seven written comments. A summary of those comments and DEL's responses are located in the table in section C.1. of this Concise Explanatory Statement.
- DEL has consulted DSHS throughout the development of these rules, particularly WCCC rules in Part II of WAC 170-290 that are implemented jointly by DEL and DSHS.

B. Differences from the Proposed Rule to the Adopted Rule, Other than Editing

The following table describes changes - other than editing - made to the final rules being adopted compared to the rules as proposed on June 3, 2009, and published in the Washington State Register as filing number WSR 09-12-115. Words that are underlined are wording being *added* to the final rules. Words that are lined-through are proposed wording that is being *deleted* from the final rules.

Rule as Proposed in WSR 09-12-115	Rule as being adopted
PART I Introduction	
WAC 170-290-0001 Purpose and intent. <i>[Subsections (2) and (3) only]</i> (2) The purpose of WCCC, as provided in part II of this chapter, is to: (a) Assist families lower incomes in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs; and (b) Consider the health and safety of children while they are in care and receiving child care subsidies. (3) The purpose of SCC, as provided in part III of	WAC 170-290-0001 Purpose and intent. (2) The purpose of WCCC, as provided in part II of this chapter, is to: (a) Assist <u>eligible</u> families with lower incomes in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs; and (b) Consider the health and safety of children while they are in care and receiving child care subsidies. (3) The purpose of SCC, as provided in part III of this chapter, is to:

Rule as Proposed in WSR 09-12-115	Rule as being adopted
<p>this chapter, is to:</p> <p>(a) Assist families who are seasonally employed in agriculturally related work to access licensed child care; and</p> <p>(b) Consider the health and safety of children while they are in care and receiving child care subsidies.</p>	<p>(a) Assist <u>eligible</u> families who are seasonally employed in agriculturally related work to access <u>pay for</u> licensed child care; and</p> <p>(b) Consider the health and safety of children while they are in care and receiving child care subsidies.</p> <p><i>[Other subsections of this WAC are unchanged.]</i></p>

Reason: The changes clarify wording regarding family eligibility for DEL child care subsidy programs. The changes do not alter the intent of the rule.

WAC 170-290-0003 Definitions <i>[Subsections (9) and (10) only]</i>	WAC 170-290-0003 Definitions
<p>(9) "SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that within available funds assists families who are seasonally employed in agriculturally related work to access licensed child care.</p> <p>(10) "WCCC" means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists families with lower incomes in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs.</p>	<p>(9) "SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that within available funds assists <u>eligible</u> families who are seasonally employed in agriculturally related work to access <u>pay for</u> licensed child care.</p> <p>(10) "WCCC" means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists <u>eligible</u> families with lower incomes in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs.</p> <p><i>[Other subsections of this rule are unchanged.]</i></p>

Reason: The changes clarify language regarding family eligibility for DEL child care subsidy programs. They do not change the intent of the rule.

<p style="text-align: center;">PART II Working Connections Child Care</p>	
WAC 170-290-0005 Consumers <i>[Subsection (3) only]</i>	WAC 170-290-0005 Consumers
<p>(3) A consumer is not eligible for WCCC benefits when he or she:</p>	<p>(3) A consumer is not eligible for WCCC benefits when he or she:</p>

Rule as Proposed in WSR 09-12-115	Rule as being adopted
<p>(a) (i) Will be away from the home for more than thirty days in a row; and</p> <p>(ii) Is the only parent in the household;</p> <p>or</p> <p>(b) Has a monthly copayment that is higher than the rate the state will pay for all eligible children in care.</p>	<p>(a) (i) <u>Is the only parent in the family</u> and will be away from the home for more than thirty days in a row;</p> <p>(ii) Is the only parent in the household; or</p> <p>(b) Has a monthly copayment that is higher than the rate the state will pay for all eligible children in care.</p> <p><i>[Other changes in this WAC are editing only.]</i></p>

Reason: This is a technical change for clarity that does not alter the intent of the rule.

WAC 170-290-0015 Eligibility – Family (lead paragraph and subsection (1) only)	WAC 170-290-0015 Eligibility – Family																				
<p>DSHS determines a consumer's family size by reviewing those individuals who live together in the same household as follows:</p>	<p>DSHS determines a consumer's family size by reviewing those individuals who live together in the same household as follows:</p>																				
<table border="1"> <tr> <th data-bbox="181 928 488 1094">(1) If a consumer is:</th><th data-bbox="488 928 807 1094">DSHS counts the following individuals as part of the family for WCCC eligibility:</th></tr> <tr> <td data-bbox="181 1094 488 1260">(a) A single parent, including a minor parent living independently.</td><td data-bbox="488 1094 807 1260">The consumer and the consumer's children.</td></tr> <tr> <td data-bbox="181 1260 488 1394">(b) Unmarried parents who have at least one mutual child.</td><td data-bbox="488 1260 807 1394">Both parents and all their children living in the household.</td></tr> <tr> <td data-bbox="181 1394 488 1598">(c) Unmarried parents with no mutual children.</td><td data-bbox="488 1394 807 1598">Unmarried parents and their respective children living in the household as separate WCCC families.</td></tr> <tr> <td data-bbox="181 1598 488 1713">(d) Married parents.</td><td data-bbox="488 1598 807 1713">Both parents and all their children living in the household.</td></tr> </table>	(1) If a consumer is:	DSHS counts the following individuals as part of the family for WCCC eligibility:	(a) A single parent, including a minor parent living independently.	The consumer and the consumer's children.	(b) Unmarried parents who have at least one mutual child.	Both parents and all their children living in the household.	(c) Unmarried parents with no mutual children.	Unmarried parents and their respective children living in the household as separate WCCC families.	(d) Married parents.	Both parents and all their children living in the household.	<table border="1"> <tr> <th data-bbox="831 928 1159 1094">(1) If a consumer's <u>family includes is:</u></th><th data-bbox="1159 928 1487 1094">DSHS counts the following individuals as part of the family for WCCC eligibility:</th></tr> <tr> <td data-bbox="831 1094 1159 1260">(a) A single parent, including a minor parent living independently.</td><td data-bbox="1159 1094 1487 1260">The consumer and the consumer's children.</td></tr> <tr> <td data-bbox="831 1260 1159 1394">(b) Unmarried parents who have at least one mutual child.</td><td data-bbox="1159 1260 1487 1394">Both parents and all their children living in the household.</td></tr> <tr> <td data-bbox="831 1394 1159 1598">(c) Unmarried parents with no mutual children.</td><td data-bbox="1159 1394 1487 1598">Unmarried parents and their respective children living in the household as separate WCCC families.</td></tr> <tr> <td data-bbox="831 1598 1159 1713">(d) Married parents.</td><td data-bbox="1159 1598 1487 1713">Both parents and all their children living in the household.</td></tr> </table>	(1) If a consumer's <u>family includes is:</u>	DSHS counts the following individuals as part of the family for WCCC eligibility:	(a) A single parent, including a minor parent living independently.	The consumer and the consumer's children.	(b) Unmarried parents who have at least one mutual child.	Both parents and all their children living in the household.	(c) Unmarried parents with no mutual children.	Unmarried parents and their respective children living in the household as separate WCCC families.	(d) Married parents.	Both parents and all their children living in the household.
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Rule as Proposed in WSR 09-12-115		Rule as being adopted	
(e) Undocumented parents.	Parents and children, documented and undocumented, as long as the child needing care is a U.S. citizen or legally residing in the United States. All other family rules in this section apply.	(e) Undocumented parents.	Parents and children, documented and undocumented, as long as the child needing care is a U.S. citizen or legally residing in the United States. All other family rules in this section apply.
(f) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew, niece, aunt, uncle, grandparent; or great-nephew, great-niece, great-aunt, great-uncle, or great-grandparent.	The children only (the children and their income are counted) .	(f) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew, niece, aunt, uncle, grandparent; or great-nephew, great-niece, great-aunt, great-uncle, or great-grandparent.	The children only (the children and their income are counted) .
(g) A minor parent with children and lives with a parent/guardian.	Only the minor parent and their children.	(g) A minor parent with children and lives with a parent/guardian.	Only the minor parent and their children.
(h) A family member who is out of the household because of employer requirements, such as the military or training, and is expected to return to the household.	The consumer, the absent individual, and the children. Subsection (1)(b) and (d) of this section apply.	(h) A family member <u>parent</u> who is out of the household because of employer requirements, such as the military or training, and is expected to return to the household.	The consumer, the absent parent individual , and the children. Subsection (1)(b) and (d) of this section apply.

Rule as Proposed in WSR 09-12-115		Rule as being adopted	
(i) A family member who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household.	The consumer, the absent individual and the children. Subsection (1)(b) and (d) of this section apply as well as WAC 170-290-0020.	(i) A family member parent who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household.	The consumer, the absent individual parent and the children. Subsection (1)(b) and (d) of this section apply as well as WAC 170-290-0020.
(j) An incarcerated family member.	The absent individual is removed from the household. We count all remaining household members. All other family rules in this section apply.	(j) An incarcerated family member parent.	The incarcerated absent individual is <u>not part of the household count in determining income and eligibility.</u> removed from the household DSHS counts all remaining household members. All other family rules in this section apply.
		[Other subsections of this rule are editing only.]	

Reason: These are technical changes for purposes of clarity that do not alter the intent of the rule. A change identical to subsection (1)(j) is also made in the table at WAC 170-290-3540(1)(h).

<p>WAC 170-290-0025 Consumer rights. [Subsection (12) only]</p> <p>When a consumer applies for or receives WCCC benefits, he or she has the right to:</p> <p>...(12) Not be charged by the consumer's licensed or certified provider, or be made to pay for:</p> <p>(a) The difference between their private rate and the state maximum rate, when their private rate for child care or the registration fee is higher;</p> <p>(b) Any day when the consumer's child is absent;</p>	<p>WAC 170-290-0025(12) Consumer rights.</p> <p>When a consumer applies for or receives WCCC benefits, he or she has the right to:</p> <p>...(12) Not be charged by the consumer's licensed or certified provider, or be made to pay for:</p> <p>(a) The difference between their <u>the provider's</u> private rate and the state maximum rate, when their <u>the provider's</u> private rate for child care or the registration fee is higher;</p> <p>(b) Any day when the consumer's child is absent;</p>
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Rule as Proposed in WSR 09-12-115	Rule as being adopted
<p>(c) Vacation days when the provider chooses to close;</p> <p>(d) A higher amount than the state allows for field trips.</p>	<p>(c) Vacation days when the provider chooses to close;</p> <p>(d) A higher amount than the state allows for field trips. <u>If the consumer requests, and the provider has a policy in place, the consumer may voluntarily pay the difference between the amount that the state allows and the actual field trip cost;</u></p> <p><i>[Other changes to this WAC are editing only.]</i></p>

Reason:

This change is needed for clarity. It allows the consumer to contribute to the cost of a field trip if the cost per child is more than what the state will pay. But the rule doesn't require the consumer to pay.

WAC 170-290-0030 Consumers' responsibilities. <i>[First paragraph and subsections (4) through (10) only]</i>	WAC 170-290-0030 Consumers' responsibilities.
<p>When a consumer applies for or receives WCCC benefits, he or she must: ...</p> <p>(4) Leave the consumer's children with his or her provider while the consumer is in WCCC approved activities. If the consumer is not in an approved activity and wants to use the provider, he or she must make a plan to pay the provider if the provider wants payment;</p> <p>(5) Pay for additional child care hours that exceed the DSHS authorization based on the same fees that are charged to other families;</p> <p>...(8) Cooperate (provide the information requested) with the quality assurance review process to remain eligible for WCCC. A consumer becomes ineligible for WCCC benefits upon a determination of noncooperation by quality assurance and remains ineligible until he or she meets quality assurance requirements or thirty days from the determination of noncooperation. If DSHS determines that a consumer is not cooperating, the consumer will not be eligible for WCCC benefits. The consumer may become eligible again when he or she meets WCCC requirements in part II of this chapter, or when thirty days have passed since the consumer;</p>	<p>When a consumer applies for or receives WCCC benefits, he or she <u>the consumer</u> must: ...</p> <p>(4) <u>Only use WCCC benefits</u> Leave the consumer's children with his or her provider while the consumer is in WCCC approved activities. If the consumer is not in an approved activity and wants to use the provider, he or she must make a plan to pay the provider if the provider wants payment. <u>The provider may charge the consumer the same rate that the provider charges to other parents who are not in the WCCC program;</u></p> <p>(5) Pay for additional child care hours that exceed the DSHS authorization based on the same fees that are charged to other families;</p> <p>...(8) <u>Cooperate (provide the information requested) with the quality assurance review process to remain eligible for WCCC. A consumer becomes ineligible for WCCC benefits upon a determination of noncooperation by quality assurance and remains ineligible until he or she meets quality assurance requirements or thirty days from the determination of noncooperation. If DSHS determines that a consumer is not cooperating, the consumer will not be eligible for WCCC benefits. The consumer may become eligible again when he or she meets WCCC requirements in part II of this chapter, or when thirty days have passed since the consumer;</u></p> <p>(9) <u>(8) Provide the information requested by DSHS's WCCC staff or the fraud early detection (FRED) investigator. If the consumer refuses to provide the</u></p>

Rule as Proposed in WSR 09-12-115	Rule as being adopted
<p>(9) Provide the information requested by DSHS's WCCC staff or the fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within a reasonable time, it could affect his or her benefits; and</p> <p>(10) Sign the consumer's children in and out of child care as provided in WAC 170-290-0138, 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider.</p>	<p>information requested within fourteen days, it could affect his or her benefits; and</p> <p>(10)(9) Sign the consumer's children in and out of child care as provided <u>Document the children's attendance as described in WAC 170-290-0138, 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; and</u></p> <p><u>(10) Provide to his or her in-home/relative provider the names, addresses and telephone numbers of persons who are authorized to pick up the child from care.</u></p> <p><i>[Other changes to this WAC are editing only.]</i></p>

Reason: These changes clarify the scope of consumers' responsibilities. The requirement in new subsection (10) is moved from proposed language in WAC 170-290-0138.

WAC 170-290-0032 Failure to report changes.	WAC 170-290-0032 Failure to report changes.
<p>If a consumer fails to report any changes as required in WAC 170-290-0031 within the stated time frames, DSHS may establish an overpayment to the consumer per WAC 170-290-0271, or the consumer may have to pay additional costs, such as:</p> <p>(1) A higher copayment as provided in WAC 170-290-0085; or</p> <p>(2) Receiving an overpayment beyond what the provider is allowed to bill (see publication <i>Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers</i>, DEL 22-877, March 2007).</p>	<p>If a <u>A</u> consumer's failure fails to report any changes as required in WAC 170-290-0031 within the stated time frames <u>may cause;</u> DSHS may establish an overpayment to the consumer per WAC 170-290-0271, or the consumer may have to pay additional costs, such as:</p> <p>(1) A <u>higher</u> copayment <u>error</u>. <u>The consumer may be required to pay a higher copayment as stated as provided in WAC 170-290-0085; or</u></p> <p>(2) A WCCC payment error. Receiving <u>If an</u> overpayment <u>occurs, the consumer may receive an overpayment for beyond</u> what the provider is allowed to bill, <u>including billing for absent days</u> (see publication <i>Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers</i>, DEL 22-877, March 2007 <u>revised 2009</u>).</p>

Reason: This change clarifies the overpayment language, and makes the rule more consistent with the Collective Bargaining Agreement.

WAC 170-290-0055 Receipt of benefits when not engaged in approved activities.	WAC 170-290-0055 Receipt of benefits when not engaged in approved activities.
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Rule as Proposed in WSR 09-12-115	Rule as being adopted
<p>When care is approved in the situations described in subsections (1) and (2) of this section, the child needs to attend for the provider to bill.</p> <p>(1) Fourteen-day wait period. DSHS may authorize WCCC payments for a child's attendance in child care for up to fourteen consecutive days when a consumer is waiting to enter an approved activity under WAC 170-290-0040 or 170-290-0045.</p> <p>(2) Twenty-eight-day gap period. DSHS may authorize WCCC payments to ensure a child's continuing attendance in child care for up to twenty-eight consecutive days when a consumer experiences a gap in his or her employment or approved activity. The consumer may be eligible for this twenty-eight-day gap period:</p> <p>(a) Twice in a calendar year; and</p> <p>(b) For the same number of units open while the consumer is in the approved activity, not to exceed two hundred thirty hours a month.</p> <p>(3) In order for a consumer to qualify for the twenty-eight-day gap period:</p> <p>(a) The consumer must be currently receiving WCCC benefits;</p> <p>(b) The consumer must report to DSHS within ten days the loss of his or her employment or approved activity; and</p> <p>(c) The consumer must:</p> <p>(i) Be looking for another job; or</p> <p>(ii) Have verbal or written assurance from the consumer's employer or approved activity that the employment or approved activity will resume within the twenty-eight-day gap period.</p>	<p><i>[A new subsection (4) is added to the rule.]</i></p> <p>When care is approved in the situations described in subsections (1) and (2) of this section, the child needs to attend for the provider to bill.</p> <p>(1) Fourteen-day wait period. DSHS may authorize WCCC payments for a child's attendance in child care for up to fourteen consecutive days when a consumer is waiting to enter an approved activity under WAC 170-290-0040 or 170-290-0045.</p> <p>(2) Twenty-eight-day gap period. DSHS may authorize WCCC payments to ensure a child's continuing attendance in child care for up to twenty-eight consecutive days when a consumer experiences a gap in his or her employment or approved activity. The consumer may be eligible for this twenty-eight-day gap period:</p> <p>(a) Twice in a calendar year; and</p> <p>(b) For the same number of units open while the consumer is in the approved activity, not to exceed two hundred thirty hours a month.</p> <p>(3) In order for a consumer to qualify for the twenty-eight-day gap period:</p> <p>(a) The consumer must be currently receiving WCCC benefits;</p> <p>(b) The consumer must report to DSHS within ten days the loss of his or her employment or approved activity; and</p> <p>(c) The consumer must:</p> <p>(i) Be looking for another job; or</p> <p>(ii) Have verbal or written assurance from the consumer's employer or approved activity that the employment or approved activity will resume within the twenty-eight-day gap period.</p> <p><u>(4) A consumer is eligible for the minimum copayment during the fourteen-day wait period or twenty-eight-day gap period.</u></p>

Reason:

This change clarifies the rule to be consistent with current department practice. The change is not expected to negatively impact consumers, child care providers, or the state budget. The change ensures fair application across DSHS Community Services Offices for child care providers and WCCC consumers.

Rule as Proposed in WSR 09-12-115	Rule as being adopted
<p>WAC 170-290-0085 Change in copayment.</p> <p>(1) Once DSHS determines that a consumer is eligible for WCCC benefits, his or her copayment may change when:</p> <ul style="list-style-type: none"> (a) The consumer's monthly income decreases; (b) The consumer's family size increases; (c) DSHS makes an error in the consumer's copayment computation; (d) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication; (e) The consumer is no longer eligible for the minimum copayment under WAC 170-290-0090; (f) DEL makes a mass change in benefits due to a change in law or program funding; or (g) The consumer is approved for a new eligibility period. 	<p>WAC 170-290-0085 Change in copayment.</p> <p><i>[A new subsection (1)(h) is added to this section.]</i></p> <p>(1) Once DSHS determines that a consumer is eligible for WCCC benefits, his or her copayment may change when:</p> <ul style="list-style-type: none"> (a) The consumer's monthly income decreases; (b) The consumer's family size increases; (c) DSHS makes an error in the consumer's copayment computation; (d) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication; (e) The consumer is no longer eligible for the minimum copayment under WAC 170-290-0090; (f) DEL makes a mass change in benefits due to a change in law or program funding; or (g) The consumer is approved for a new eligibility period; <u>or</u> (h) <u>The consumer is approved for the fourteen-day wait period or twenty-eight-day gap period as provided in WAC 170-290-0055.</u> <p><i>[Other subsections of this WAC are unchanged.]</i></p>

Reason:

This change clarifies the existing rule consistent with department practice. The change is not expected to negatively impact consumers, child care providers, or the state budget. The change ensures fair application across DSHS Community Services Offices for child care providers and WCCC consumers.

<p>WAC 170-290-0125 Eligible child care providers.</p> <p>(1) To receive payment under the WCCC program, a consumer's child care provider must be:</p> <ul style="list-style-type: none"> (a) Currently licensed as required by chapter 43.215 RCW and chapters 170-295, 170-296, or 170-151 WAC; (b) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. DSHS pays the lesser of the following to qualified child care facilities in bordering states: <ul style="list-style-type: none"> (i) The provider's private pay rate for that child; or (ii) The DSHS maximum child care subsidy daily rate for the DSHS region where the child resides. 	<p>WAC 170-290-0125 Eligible child care providers.</p> <p>(1) To receive payment under the WCCC program, a consumer's child care provider must be:</p> <p><u>(1) A licensed, certified, or DEL-contracted provider.</u></p> <p><u>(a) Licensed providers are:</u></p> <ul style="list-style-type: none"> <u>(i)</u> Currently licensed as required by chapter 43.215 RCW and chapters 170-295, 170-296, or 170-151 WAC; <u>or</u> <u>(ii)</u> Meeting their <u>provider's</u> state's licensing regulations, for providers who care for children in states bordering Washington. DSHS <u>pays</u> the lesser of the following to qualified child care facilities in bordering states: <ul style="list-style-type: none"> <u>(A)</u> The provider's ((usual-daily)) <u>private pay</u>
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Rule as Proposed in WSR 09-12-115	Rule as being adopted
<p>(c) Exempt from licensing but certified by DEL, such as:</p> <ul style="list-style-type: none"> (i) Tribal child care facilities that meet the requirements of tribal law; (ii) Child care facilities on a military installation; and (iii) Child care facilities operated on public school property by a school district. <p>(d) Seasonal day camps that have a contract with DEL to provide subsidized child care, and are:</p> <ul style="list-style-type: none"> (i) Of a duration of three months or less; (ii) Engaged in primarily recreational or educational activities; and (iii) Accredited by the American Camping Association (ACA) <p>2) Providers other than those specified in this section shall meet the requirements in WAC 170-290-0130.</p>	<p>rate for that child; or</p> <p>(B) The DSHS maximum child care subsidy daily rate for the DSHS region where the child resides.</p> <p><u>(b) Certified providers are</u> exempt from licensing but certified by DEL, such as:</p> <ul style="list-style-type: none"> (i) Tribal child care facilities that meet the requirements of tribal law; (ii) Child care facilities on a military installation; and (iii) Child care facilities operated on public school property by a school district. <p><u>(c) DEL-contracted</u> seasonal day camps have a contract with DEL to provide subsidized child care; or and are:</p> <ul style="list-style-type: none"> (iv) Of a duration of three months or less; (v) Engaged in primarily recreational or educational activities; and (vi) Accredited by the American Camping Association (ACA) <p>(2) <u>An in-home/relative provider.</u> Providers other than those specified in subsection (1) of this section shall <u>must</u> meet the requirements in WAC 170-290-0130.</p>

Reason:

This change deletes duplicate language and clarifies other wording of this WAC section. The requirements for contracted seasonal day camps are in DEL contracts and are not needed in the rule.

WAC 170-290-0130 In-home/relative providers – Eligibility	WAC 170-290-0130 In-home/relative providers – Eligibility
<p><i>[Subsections (2) and (7) only]</i></p> <p>(2) Additionally, eligible in-home/relative providers must:</p> <ul style="list-style-type: none"> (a) Meet all applicable background check requirements in part II of this chapter; (b) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including environmental, physical, nutritional, emotional, cognitive, safety, and social needs. As used in this section, "care" means that the provider must be within sight or hearing of the children in his or her care, both inside and outside; and 	<p>(2) Additionally, eligible in-home/relative providers must:</p> <ul style="list-style-type: none"> (a) Meet all applicable background check requirements in part II of this chapter; (b) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including environmental, physical, nutritional, emotional, cognitive, safety, and social needs. As used in this section, "care" means that the provider must be within sight or hearing of the children in his or her care, both inside and outside; and...

Rule as Proposed in WSR 09-12-115	Rule as being adopted
<p>(c) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the parent for his or her DSHS approved activities or work hours.</p> <p>...(7) WCCC consumers who choose in-home/relative care are responsible to monitor the environment and child care services they receive from their provider. Additionally, WCCC consumers are required by federal law to ensure that their children who receive subsidized child care outside of their own home are current on all Washington state immunizations, except in cases based on religious preference or medical conditions.</p>	<p>(c) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the parent for his or her DSHS approved activities or work hours.</p> <p>...(7) WCCC consumers who choose in-home/relative care are responsible to monitor the environment and child care services they receive from their provider. Additionally, WCCC consumers are required by federal law to <u>must</u> ensure that their children who receive subsidized child care outside of their own home are current on all Washington state immunizations, except in cases based on religious preference or medical conditions.</p> <p><i>[Other subsections of this WAC are unchanged.]</i></p>

Reason:

Deletes proposed language defining “care” in subsection (2)(b) as inappropriate for in-home/relative care. The change in subsection (7) does not change the intended effect of the rule.

WAC 170-290-0138 In-home/relative providers - Responsibilities	WAC 170-290-0138 In-home/relative providers - Responsibilities
<p>A consumer's in-home/relative provider must:</p> <p>(1) Provide care, supervision, and daily activities based on the child's developmental needs. As used in this section, "care" means that the provider must be within sight or hearing of the children in his or her care, both inside and outside;</p> <p>(2) Report to DSHS within ten days any changes to their legal name, address or telephone number;</p> <p>(3) Report to DSHS within twenty-four hours any pending charges or convictions they have;</p> <p>(4) Report to DSHS within twenty-four hours any pending charges or convictions for anyone sixteen years of age and older who lives with the provider when care occurs in the provider's home;</p> <p>(5) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the consumer for his or her DSHS approved activities;</p> <p>(6) Bill for no more than six children at one time during the same hours of care;</p>	<p>An consumer's in-home/relative provider must:</p> <p>(1) Provide care, supervision, and daily activities based on the child's developmental needs. As used in this section, "care" means that the provider must be within sight or hearing of the children in his or her care, both inside and outside;</p> <p>(2) Report to DSHS within ten days any changes to their legal name, address or telephone number;</p> <p>(3) Report to DSHS within twenty-four hours any pending charges or convictions they have;</p> <p>(4) Report to DSHS within twenty-four hours any pending charges or convictions for anyone sixteen years of age and older who lives with the provider, <u>including any person sixteen years of age or older who newly resides with the provider, when the provider cares for the child</u> when care occurs in the provider's home. <u>Background checks must be completed for all these persons as provided in WAC 170-290-0143;</u></p> <p>(5) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the consumer for his or her DSHS approved activities;</p>

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<p>(7) Keep daily attendance records that:</p> <p>(a) Show days and times the care was provided;</p> <p>(b) Show the consumer's full signature, or the full signature of the consumer's designee as provided in subsection (8) of this section, signing the child in and out of the provider's care;</p> <p>(c) Be kept for five years; and</p> <p>(d) Be given to DSHS or DEL, within fourteen consecutive calendar days, if DSHS or DEL asks for them.</p> <p>(8) If the consumer wishes to designate an alternate person to drop off and/or pick up the consumer's child:</p> <p>(a) The consumer's designee must be over the age of eighteen; and</p> <p>(b) There must be a signed and dated agreement between the provider and the consumer allowing the consumer's designee to leave with the consumer's child.</p>	<p>(6) Bill for no more than six children at one time during the same hours of care;</p> <p>(7) Keep daily attendance records that <u>for five years</u> documenting the days and hours of care provided;</p> <p>(8) Have the consumer sign and date the records at least <u>weekly, verifying the accuracy of the dates and times;</u> that:</p> <p>(a) Show days and times the care was provided;</p> <p>———— (b) Show the consumer's full signature, or the full signature of the consumer's designee as provided in subsection (8) of this section, signing the child in and out of the provider's care;</p> <p>———— (c) Be kept for five years; and</p> <p><u>(89) Repay any overpayments under WAC 170-290-0268; and</u></p> <p><u>(910) Provide any of the records in subsections (7) and (8) of this section that are requested by</u> Be given to DSHS or DEL, within fourteen consecutive calendar days of the request, if DSHS or DEL asks for them.</p> <p>(8) If the consumer wishes to designate an alternate person to drop off and/or pick up the consumer's child:</p> <p>———— (a) The consumer's designee must be over the age of eighteen; and</p> <p>———— (b) There must be a signed and dated agreement between the provider and the consumer allowing the consumer's designee to leave with the consumer's child.</p>

Reasons:

- Deletes proposed language defining “care” in subsection (1) as inappropriate for in-home/relative care.
- Amends subsection (4) to clarify that the reporting requirement includes any person sixteen years of age or older who newly resides with the provider when the provider cares for the child in the provider's home, and that background checks must be completed for all these persons as provided in WAC 170-290-0143.
- As a result of a public comment on the proposal, proposed subsection (7) is amended and subsections (8) to (10) are added to clarify consumers’ in-home/relative providers’ responsibilities relating to attendance keeping records needed by the Collective Bargaining Agreement.
- Deletes proposed subsection (8). This requirement is moved to a new subsection (10) of WAC 170-290-0030 Consumer’s responsibilities.

**WAC 170-290-0140 In-home/relative providers--
Ineligibility.**

[Subsection (4) Only]

(4) DSHS determines a consumer's provider is not of suitable character and competence or of sufficient

**WAC 170-290-0140 In-home/relative providers--
Ineligibility.**

(4) DSHS determines a consumer's provider is not of

Rule as Proposed in WSR 09-12-115	Rule as being adopted
<p>physical or mental health to meet the needs of the child in care, or the household may be at risk of harm by this provider, as indicated by information other than conviction information. DSHS will use criteria, such as the following, when reviewing information about incidents, issues, reports, and findings:</p>	<p>suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care, or the <u>household consumer's child</u> may be at risk of harm by this provider, as indicated by information other than conviction information. DSHS will use criteria, such as the following, when reviewing information about incidents, issues, reports, and findings:</p> <p><i>[Other subsections of this WAC are unchanged.]</i></p>

Reason:

This change clarifies that the rule applies to care for the consumer's child rather than for the household.

<p>WAC 170-290-0145 In-home/relative providers – Ineligibility. [Subsection (4) only]</p> <p>(4) It is the WCCC consumer's responsibility to monitor the in-home/relative providers' quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety and social needs are being met.</p>	<p>WAC 170-290-0145 In-home/relative providers – Ineligibility. [Deleting subsection (4) only]</p> <p>(4) It is the WCCC consumer's responsibility to monitor the in-home/relative providers' quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety and social needs are being met.</p> <p><i>[Other subsections of this WAC are unchanged.]</i></p>
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Reason: The language in subsection (4) duplicates wording in WAC 170-290-0030(7) Consumers' Responsibilities.

<p>WAC 170-290-0155 In-home/relative providers--Background checks--Subsequent steps. [Subsection (6) only]</p> <p>After DSHS receives the background information, DSHS:</p> <p>...(6) Assists the consumer in finding other child care arrangements.</p>	<p>WAC 170-290-0155 In-home/relative providers--Background checks--Subsequent steps. [Deleting subsection (6) only]</p> <p>After DSHS receives the background information, DSHS:</p> <p>...(6) Assists the consumer in finding other child care arrangements.</p> <p><i>[Other subsections of this WAC are unchanged.]</i></p>
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Reason: Subsection (6) relates to DSHS procedure, and is not needed in the rule.

<p>WAC 170-290-0165 In-home/relative providers--Background checks--Other disqualifying information [Subsection (1) only]</p> <p>(1) DSHS can disqualify a consumer's in-</p>	<p>WAC 170-290-0165 In-home/relative providers--Background checks--Other disqualifying information</p> <p>(1) DSHS can disqualify a consumer's in-home/relative</p>
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Rule as Proposed in WSR 09-12-115	Rule as being adopted
<p>home/relative provider if the individual being checked has a background containing information other than conviction information that DSHS determines:</p> <p>(a) Makes the individual not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care; or</p> <p>(b) Puts the household at risk for harm.</p>	<p>provider if the individual being checked has a background containing information other than conviction information that DSHS determines:</p> <p>(a) Makes the individual not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care; or</p> <p>(b) Puts the household <u>consumer's child</u> at risk for harm.</p> <p><i>[Other subsections of this WAC are unchanged.]</i></p>

Reason:

This change clarifies that the rule applies to care for the consumer's child rather than for the household.

WAC 170-290-0200 Daily child care rates-- Licensed or certified child care centers and DEL contracted seasonal day camps <i>[Subsection (2) only]</i>	WAC 170-290-0200 Daily child care rates--Licensed or certified child care centers and DEL contracted seasonal day camps
<p>(2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited waiver from their child care licenser to provide care for a child outside the age listed on their license.</p>	<p>(2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited waiver from their child care licenser to provide care for a child outside the age listed on their license. <u>If the provider has a waiver to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five to twelve year age range column is used for comparison.</u></p> <p><i>[Other subsections of this WAC are unchanged.]</i></p>

Reason: This change makes the rule consistent with language in WAC 170-290-0205(2).

WAC 170-290-0225 Special needs rates – Child care centers and seasonal day camps.	WAC 170-290-0225 Special needs rates – Child care centers and seasonal day camps.
<p>(1) In addition to the rate listed in WAC 170-290-0200, DSHS authorizes special needs daily rates to licensed or certified child care centers or DEL contracted seasonal day camps according to whichever of the following is greater:</p> <p>(a) The provider's reasonable documented additional cost associated with the care of the child; or</p> <p>(b) The daily rate listed in the table below</p>	<p>(1) In addition to the rate listed in WAC 170-290-0200, DSHS authorizes special needs daily rates to licensed or certified child care centers or DEL contracted seasonal day camps <u>after a consumer has verified that his or her child has a special need and requires a higher level of care according to WAC 170-290-0220,</u> according to whichever of the following is greater:</p> <p>(a) The provider's reasonable documented additional cost associated with the care of the child; or</p> <p>(b) The daily rate listed in the table below after a consumer has verified that his or her child has a special</p>

Rule as Proposed in WSR 09-12-115	Rule as being adopted
<p>after a consumer has verified that his or her child has a special need and requires a higher level of care according to WAC 170-290-0220:...</p> <p>(2) The child care provider must verify the child's additional care needs when they request a rate above that listed in subsection (1)(b) of this section. The verification should include details about all of the child's additional needs while in child care in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.</p>	<p>need and requires a higher level of care according to WAC 170-290-0220:...</p> <p>(2) The child care provider must verify the child's additional care needs when they request a rate above that listed in subsection (1)(b) of this section. The verification should include details about all of the child's additional needs while in child care in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.</p> <p><i>[Other subsections of this WAC and the rate table following subsection (1) are unchanged.]</i></p>

Reasons:

- Wording from subsection (1)(b) is moved to subsection (1) for clarity and does not change the intent of the rule.
- As a result of a public comment received on the proposal, the phrase “while in child care” in subsection (2) is deleted pending further consideration.

WAC 170-290-0230 Special needs rates--Family home child care providers.	WAC 170-290-0230 Special needs rates--Family home child care providers.
<p><i>[Subsections (1) and (2) only.]</i></p> <p>(1) In addition to the rate listed in WAC 170-290-0205, DSHS authorizes special needs daily rates to licensed or certified family home child care providers according to whichever of the following is greater:</p> <p>(a) The provider's reasonable documented additional cost associated with the care of the child; or</p> <p>(b) The daily rate listed in the table below after the consumer has verified that his or her child has a special need and requires a higher level of care according to WAC 170-290-0220:</p> <p>(2) A family home child care provider must verify the child's additional care needs when they request a rate above that listed in subsection (1)(b) of this section. The verification should include details about all of the child's additional needs while in child care in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.</p>	<p>(1) In addition to the rate listed in WAC 170-290-0205, DSHS authorizes special needs daily rates to licensed or certified family home child care providers <u>after the consumer has verified that his or her child has a special need and requires a higher level of care according to WAC 170-290-0220</u>, according to whichever of the following is greater:</p> <p>(a) The provider's reasonable documented additional cost associated with the care of the child; or</p> <p>(b) The daily rate listed in the table below after the consumer has verified that his or her child has a special need and requires a higher level of care according to WAC 170-290-0220:</p> <p>(2) A family home child care provider must verify the child's additional care needs when they request a rate above that listed in subsection (1)(b) of this section. The verification should include details about all of the child's additional needs while in child care in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.</p> <p><i>[Other subsections of this WAC and the rate table</i></p>

Rule as Proposed in WSR 09-12-115	Rule as being adopted
	<i>following subsection (1) are unchanged.]</i>

Reasons:

- Wording from subsection (1)(b) is moved to subsection (1) for clarity and does not change the intent of the rule.
- As a result of a public comment received on the proposal, the phrase “while in child care” in subsection (2) is deleted pending further consideration.

<p>WAC 170-290-0235 Special needs rates--In-home/relative providers.</p> <p>(1) DSHS authorizes a base rate of two dollars and twenty cents an hour for in-home/relative child care when a child has verified special needs and requires a higher level of care according to WAC 170-290-0220.</p> <p>(2) In addition to the base rate, the state authorizes whichever of the following is greater:</p> <p>(a) Sixty-two cents per hour, for a total of two dollars and eighty-two cents per hour; or</p> <p>(b) The provider's reasonable documented additional cost associated with the care for that child while the child is in the child care setting.</p> <p>(3) The in-home/relative provider must verify the child's additional care needs when they request a rate above that listed in subsection (2)(a) of this section. The verification must include details about all the child's additional needs while in child care in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.</p> <p>(4) If other children in the home are also authorized for in-home/relative care with the same provider, DSHS authorizes the lesser of the following:</p> <p>(a) Two dollars and twenty cents per hour for the child who needs the greatest number of hours of care and two dollars and seventeen cents per hour for the care of each additional child in the family; or</p> <p>(b) An amount less than the state's rate.</p>	<p>WAC 170-290-0235 Special needs rates--In-home/relative providers.</p> <p>(1) DSHS authorizes a base rate of two dollars and twenty cents an hour for in-home/relative child care when a child has verified special needs and requires a higher level of care according to WAC 170-290-0220.</p> <p>(2) In addition to the base rate, the state authorizes whichever of the following is greater:</p> <p>(a) Sixty-two cents per hour, for a total of two dollars and eighty-two cents per hour; or</p> <p>(b) The provider's reasonable documented additional cost associated with the care for that child while the child is in the child care setting.</p> <p>(3) The in-home/relative provider must verify the child's additional care needs when they request a rate above that listed in subsection (2)(a) of this section. The verification must include details about all the child's additional needs while in child care in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.</p> <p>(4) If other children in the home are also authorized for in-home/relative care with the same provider, DSHS authorizes the lesser of the following:</p> <p>————(a) T two dollars and twenty cents per hour for the child who needs the greatest number of hours of care and two dollars and seventeen cents per hour for the care of each additional child in the family;or</p> <p>————(b) An amount less than the state's rate.</p>
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Reasons:

- As a result of a public comment received, DEL is deleting the phrases “while in the child care setting” in subsection (2) and “while in child care” in subsection (3) pending further consideration.

Rule as Proposed in WSR 09-12-115	Rule as being adopted
<ul style="list-style-type: none"> As a result of a public comment received on the proposal, subsection (4) was changed to make it consistent with the child care Collective Bargaining Agreement. 	
<p>WAC 170-290-0240 Child care subsidy rates--In-home/relative providers. <i>[Subsection (1) only]</i></p> <p>1) When a consumer employs an in-home/relative provider, the maximum DSHS pays for child care is the lesser of the following:</p> <p style="padding-left: 40px;">(a) Two dollars and twenty cents per hour for the child who needs the greatest number of hours of care and two dollars and seventeen cents per hour for the care of each additional child in the family; or</p> <p style="padding-left: 40px;">(b) An amount less than the state's rate...</p>	<p>WAC 170-290-0240 Child care subsidy rates--In-home/relative providers.</p> <p>1) When a consumer employs an in-home/relative provider, the maximum DSHS pays for child care is the <u>the lesser of the following:</u></p> <p style="padding-left: 40px;">—(a) Two dollars and twenty cents per hour for the child who needs the greatest number of hours of care and two dollars and seventeen cents per hour for the care of each additional child in the family; or</p> <p style="padding-left: 40px;">—(b) An amount less than the state's rate...</p> <p><i>[Other subsections of this WAC are unchanged.]</i></p>
<p>Reason:</p> <p>As a result of a public comment received on the proposal, the rule was changed to make the language consistent with the child care Collective Bargaining Agreement, pending further review.</p>	
<p>WAC 170-290-0247 Field trip fees. <i>[Subsection (2) only]</i></p> <p>(2) The field trip fee can only be reimbursed for children three years of age and older. In-home/relative and licensed family home child care providers are exempt from this subsection.</p>	<p>WAC 170-290-0247 Field trip fees. <i>[Subsection (2) only]</i></p> <p>(2) The field trip fee can only be reimbursed for children three years of age and older. In-home/relative and licensed family home child care providers are exempt from this subsection.</p> <p><i>[Other subsections of this WAC are unchanged.]</i></p>
<p>Reason:</p> <p>Deletes language in subsection (2) pending further discussion on potential fiscal impact.</p>	
<p>WAC 170-290-0268 Payment discrepancies--Provider overpayments.</p> <p>(1) An overpayment occurs when a provider receives a payment that is more than the provider is eligible to receive. DSHS establishes overpayments for providers when that provider:</p> <p style="padding-left: 40px;">(a) Bills and receives payment for services not provided;</p> <p style="padding-left: 40px;">(b) Does not have attendance records that comply with WAC 170-290-0138 and chapters 170-151, 170-295, or 170-296 WAC, or for in-</p>	<p>WAC 170-290-0268 Payment discrepancies--Provider overpayments.</p> <p>(1) An overpayment occurs when a provider receives a payment that is more than the provider is eligible to receive. DSHS establishes <u>Provider overpayments are established for providers</u> when that provider:</p> <p style="padding-left: 40px;">(a) Bills and receives payment for services not provided;</p> <p style="padding-left: 40px;">(b) Does not have <u>Bills without attendance records that support their billing</u> comply with WAC 170-290-0138 and chapters 170-151, 170-295, or 170-296</p>

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<p>home/relative providers as provided in this chapter. Only attendance records meeting WAC requirements will be accepted for attendance verification;</p> <p>(c) Bills and receives payment for more than they are eligible to bill; or</p> <p>(d) With respect to licensed or certified providers only, is caring for a WCCC child outside of their licensed allowable age range without a waiver.</p> <p>(2) DEL's or DSHS's WCCC program staff may request documentation from a provider when preparing to establish an overpayment. The provider has fourteen consecutive calendar days to supply any requested documentation.</p> <p>(3) Providers are required to repay any payments that they were not eligible to receive.</p> <p>(4) If an overpayment was made through departmental error, the provider is still required to repay that amount.</p> <p>(5) When establishing an overpayment, DSHS reduces the overpayment by the amount of the underpayment when applicable.</p> <p>(6) Absent days can be added to an overpayment when care is used or billed when the consumer was not eligible as provided in WAC 170-290-0032 or care is billed incorrectly.</p>	<p>WAC, or for in home/relative providers as provided in this chapter. Only attendance records meeting WAC requirements will be accepted for attendance verification;</p> <p>(c) Bills and receives payment for more than they are eligible to bill; or</p> <p>(d) With respect to licensed or certified providers only, is caring for a WCCC child outside of their licensed allowable age range without a waiver.</p> <p>(2) DEL's or DSHS's WCCC program staff may request documentation from a provider when preparing to establish an overpayment. The provider has fourteen consecutive calendar days to supply any requested documentation.</p> <p>(3) Providers are required to repay any payments that they were not eligible to receive.</p> <p>(4) If an overpayment was made through departmental error, the provider is still required to repay that amount.</p> <p>(5) When establishing an overpayment, DSHS reduces the overpayment by the amount of the underpayment when applicable.</p> <p>(6) Absent days can be added to an overpayment when care is used or billed when the consumer was not eligible as provided in WAC 170-290-0032 or care is billed incorrectly.</p>

Reason:

As a result of a public comment received on the proposal, subsection (1) is amended to clarify that provider overpayments are established when providers bill without attendance records that support their billing. Proposed subsection (5) is deleted to make the rule consistent with current practice. Proposed subsection (6) is deleted because it duplicates similar revised wording in WAC 170-290-0271.

WAC 170-290-0271 Payment discrepancies-- Consumer overpayments.	WAC 170-290-0271 Payment discrepancies-- Consumer overpayments.
<p>(1) DSHS establishes overpayments for past or current consumers when:</p> <p>(a) The consumer is no longer eligible for benefits;</p> <p>(b) The consumer is eligible for a smaller amount of care than authorized, such as using care for an unapproved activity or for children not in his or her WCCC household;</p>	<p>(1) DSHS establishes overpayments for past or current consumers when <u>the consumer</u>:</p> <p>(a) <u>Received benefits when he or she was not eligible;</u> The consumer is no longer eligible for benefits;</p> <p>(b) The consumer is eligible for a smaller amount of care than authorized, such as using <u>Used</u> care for an unapproved activity or for children not in his or her WCCC household;</p>

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<p>(c) The consumer fails to report information to DSHS that results in an error in determining eligibility, amount of care authorized, or copayment;</p> <p>(d) The consumer's provider is not an eligible per WAC 170-290-0125; or</p> <p>(e) The consumer's child is not eligible per WAC 170-290-0015 or 170-290-0020.</p> <p>(2) DEL's or DSHS's staff may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.</p> <p>(3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.</p> <p>(4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.</p> <p>(5) When establishing an overpayment, DSHS reduces the overpayment by the amount of the underpayment when applicable.</p> <p>(6) Absent days can be added to an overpayment when care is used or billed when the consumer was not eligible as provided in WAC 170-290-0032 or care was billed incorrectly.</p>	<p>(c) The consumer fails <u>Failed</u> to report information to DSHS that results <u>resulting</u> in an error in determining eligibility, amount of care authorized, or copayment;</p> <p>(d) The consumer's <u>Used a</u> provider that was <u>is</u> not an eligible per WAC 170-290-0125; or</p> <p>(e) The consumer's <u>Received benefits for a child who was</u> is not eligible per WAC 170-290-0015 or 170-290-0020.</p> <p>(2) DEL's or DSHS's staff may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.</p> <p>(3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.</p> <p>(4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.</p> <p>(5) When establishing an overpayment, DSHS reduces the overpayment by the amount of the underpayment when applicable.</p> <p>(6) (5) <u>If a consumer is not eligible under WAC 170-290-0032 and the provider has billed correctly, the consumer is responsible for the entire overpayment, including any absent days. Absent days can be added to an overpayment when care is used or billed when the consumer was not eligible as provided in WAC 170-290-0032 or care was billed incorrectly.</u></p>

Reason:

The changes to subsection (1)(a) and (b) remove procedural language. Proposed subsection (5) is deleted to make the rule consistent with current practice. The revised subsection (6), renumbered as subsection (5), makes the rule consistent with current practice and the child care Collective Bargaining Agreement.

WAC 170-290-0280 Right to request an administrative hearing.	WAC 170-290-0280 Right to request an administrative hearing.
<p>(1) WCCC consumers have a right to request a hearing under chapter 388-02 WAC on any action affecting WCCC benefits except for mass changes resulting from a change in policy or law.</p> <p>(2) Licensed or certified child care providers or in-</p>	<p>(1) WCCC consumers have a right to request a hearing under chapter 388-02 WAC on any action affecting WCCC benefits except for mass changes resulting from a change in policy or law.</p> <p>(2) Licensed or certified child care providers or in-</p>

Rule as Proposed in WSR 09-12-115	Rule as being adopted
<p>home/relative providers may request hearings under chapter 388-02 WAC only for WCCC overpayments.</p> <p>(3) To request a hearing, a consumer, the licensed/certified provider, or in-home/relative provider: (a) Contacts the office which sent them the notice; or (b) Writes to the office of administrative hearings, P.O. Box 42488, Olympia, WA 98504-2488; and (c) Makes the request for a hearing within: (i) Ninety days of the date a decision is received for consumers; or (ii) Twenty-eight days of the date a decision is received for providers.</p> <p>(4) The office of administrative hearings administrative law judge enters orders in overpayment cases under WAC 388-02-0217.</p> <p>(5) To request a hearing under the seasonal child care program, see WAC 170-290-3910 and 170-290-3920.</p>	<p>home/relative providers may request hearings under this chapter and chapter 388-02 WAC only for WCCC overpayments.</p> <p>(3) To request a hearing, a consumer, the licensed/certified provider, or in-home/relative provider: (a) Contacts the <u>DSHS</u> office which sent them the notice; or (b) Writes to the office of administrative hearings, P.O. Box 424898, Olympia, WA 98504-24898; and (c) Makes the request for a hearing within: (i) Ninety days of the date a decision is received for consumers; or (ii) Twenty-eight days of the date a decision is received for providers.</p> <p>(4) The office of administrative hearings administrative law judge enters <u>initial or final orders as provided</u> orders in overpayment cases under WAC 388-02-0217. <u>Initial orders may be appealed to a DSHS review judge under chapter 388-02 WAC.</u></p> <p>(5) To request a hearing under the seasonal child care program, see WAC 170-290-3910<u>3860</u> and 170-290-3920<u>3865</u>.</p>

Reason: As a result of a comment received on the proposal, the rule was revised for clarity and accuracy.

WAC 170-290-0285 Receipt of WCCC benefits pending the outcome of an administrative hearing	WAC 170-290-0285 Receipt of WCCC benefits pending the outcome of an administrative hearing
<p><i>[Subsection (1) only]</i></p> <p>(1) A consumer may receive WCCC benefits pending the outcome of a hearing if he or she requests the hearing:</p> <p>(a) On or before the effective date of an action; or</p> <p>(b) No more than ten days after DSHS sends the consumer a notice of adverse action.</p> <p>"Adverse action" means an action to reduce or terminate a consumer's WCCC benefits.</p>	<p>(1) A consumer may receive WCCC benefits pending the outcome of a hearing if he or she requests the hearing:</p> <p>(a) On or before the effective date of an action; or</p> <p>(b) No more than ten days after DSHS sends the consumer a notice of adverse action.</p> <p><u>As used in this section, "adverse action" means an action to reduce or terminate a consumer's WCCC benefits.</u></p> <p><i>[Other portions of this WAC are unchanged.]</i></p>

Reason:

The added wording clarifies that the definition of the term "adverse action" applies only to this WAC section, and not to the term as it may be used in other DEL rules.

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Part III Seasonal Child Care Program																							
Rule as Proposed	Rule as adopted																						
WAC 170-290-3540 Eligibility – Family size <i>[Lead paragraph and subsection (1) only]</i> DEL determines a consumer's family size by reviewing those individuals who live together in the same household as follows:	WAC 170-290-3540 Eligibility – Family size DEL determines a consumer's family size by reviewing those individuals who live together in the same household as follows:																						
<table border="1"> <tr> <td>(1) If a consumer is:</td><td>DSHS counts the following individuals as part of the family for WCCC eligibility:</td></tr> <tr> <td>(a) A single parent, including a minor parent living independently.</td><td>The consumer and the consumer's children.</td></tr> <tr> <td>(b) Unmarried parents who have at least one mutual child.</td><td>Both parents and all their children living in the household.</td></tr> <tr> <td>(c) Unmarried parents with no mutual children.</td><td>Unmarried parents and their respective children living in the household as separate WCCC families.</td></tr> <tr> <td>(d) Married parents.</td><td>Both parents and all their children living in the household.</td></tr> </table>	(1) If a consumer is:	DSHS counts the following individuals as part of the family for WCCC eligibility:	(a) A single parent, including a minor parent living independently.	The consumer and the consumer's children.	(b) Unmarried parents who have at least one mutual child.	Both parents and all their children living in the household.	(c) Unmarried parents with no mutual children.	Unmarried parents and their respective children living in the household as separate WCCC families.	(d) Married parents.	Both parents and all their children living in the household.	<table border="1"> <tr> <td>(1) If a consumer's family includes is:</td><td>Then DEL counts the following individuals as part of the family for WCCC eligibility:</td></tr> <tr> <td>(a) A single parent, including a minor parent living independently.</td><td>The consumer and the consumer's children.</td></tr> <tr> <td>(b) Unmarried parents who have at least one mutual child.</td><td>Both parents and all their children living in the household.</td></tr> <tr> <td>(c) Unmarried parents with no mutual children.</td><td>Unmarried parents and their respective children living in the household as separate WCCC families.</td></tr> <tr> <td>(d) Married parents.</td><td>Both parents and all their children living in the household.</td></tr> <tr> <td>(e) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew, niece, aunt, uncle, grandparent; or great-nephew, great-niece, great-aunt, great-uncle, or great-grandparent.</td><td>The children only (the children and their income are counted) .</td></tr> </table>	(1) If a consumer's family includes is:	Then DEL counts the following individuals as part of the family for WCCC eligibility:	(a) A single parent, including a minor parent living independently.	The consumer and the consumer's children.	(b) Unmarried parents who have at least one mutual child.	Both parents and all their children living in the household.	(c) Unmarried parents with no mutual children.	Unmarried parents and their respective children living in the household as separate WCCC families.	(d) Married parents.	Both parents and all their children living in the household.	(e) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew, niece, aunt, uncle, grandparent; or great-nephew, great-niece, great-aunt, great-uncle, or great-grandparent.	The children only (the children and their income are counted) .
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(e) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew, niece, aunt, uncle, grandparent; or great-nephew, great-niece, great-aunt, great-uncle, or great-grandparent.	The children only (the children and their income are counted) .	(f) A family member <u>parent</u> who is out of the household because of employer requirements, such as the military or training, and is expected to return to the household.	The consumer, the absent parent individual , and the children.
(f) A family member who is out of the household because of employer requirements, such as the military or training, and is expected to return to the household.	The consumer, the absent individual, and the children.	(g) A family member <u>parent</u> who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household.	The consumer, the absent individual parent and the children. Subsection (1)(b) and (d) of this section apply as well as WAC 170-290-0020.
(g) A family member who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household.	The consumer, the absent individual and the children. Subsection (1)(b) and (d) of this section apply as well as WAC 170-290-0020.	(h) An incarcerated family member parent .	The incarcerated absent individual is not part of the household count in determining income and eligibility. removed from the household. We count all remaining household members. All other family rules in this section apply.
		[Other portions of this rule are unchanged]	

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(h) An incarcerated family member.	The absent individual is removed from the household. We count all remaining household members. All other family rules in this section apply.	

Reason: The changes clarify the rule without altering its intended effect and make the rule consistent with current practice.

WAC 170-290-3555 Eligibility--Approved activities. (3) Travel time between the child care location and the employment location only; (4) Job search, of no more than five days, if the consumer's seasonally available agricultural related work ends and he or she is still eligible and continues to need child care; and (5) Sleep time, up to eight hours per day when needed, if the consumer works nights and sleeps days.	WAC 170-290-3555 Eligibility--Approved activities. (3) <u>The SCC contractor may authorize care for:</u> <u>(a)</u> Travel time between the child care location and the employment location only; <u>(4)(b)</u> Job search, of no more than five days, if the consumer's seasonally available agricultural related work ends and he or she is still eligible and continues to need child care; and <u>or</u> <u>(5)(c)</u> Sleep time, up to eight hours per day when needed, if the consumer works nights and sleeps days. <i>[Other subsections of this rule are unchanged.]</i>
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Reason:

The change is needed for clarity, otherwise proposed subsections (3), (4) and (5) [subsections (3) (a), (b) and (c) in the final rule] would not have a clear context.

WAC 170-290-3565 Consumers' responsibilities. <i>[Subsections (5 and 8) only]</i> When a consumer applies for or receives SCC benefits, he or she must: ...(5) Pay, or make arrangements for someone to pay, the consumer's SCC copayment directly to the child care provider. The child care plan tells the consumer and the provider that the subsidy benefits are approved, when the subsidy benefits begin and when benefits stop, and how many hours a day benefits are approved;	WAC 170-290-3565 Consumers' responsibilities. When a consumer applies for or receives SCC benefits, he or she must: ...(5) Pay, or make arrangements for someone to pay, the consumer's SCC copayment directly to the child care provider. The child care plan tells the consumer and the provider that the subsidy benefits are approved, when the subsidy benefits begin and when benefits stop, and how many hours a day benefits are approved;
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<p>...(8) Provide the information requested by the SCC contractor or the department of social and health services fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within ten days, it could affect his or her benefits. If the SCC contractor determines that a consumer is not cooperating with the requested information, the consumer will not be eligible for SCC benefits. The consumer may become eligible again when he or she meets SCC requirements in part III of this chapter, or when thirty days have passed since the consumer became eligible.</p>	<p>...(8) Provide the information requested by the SCC contractor or the department of social and health services fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within ten<u>fourteen</u> days, it could affect his or her benefits. If the SCC contractor determines that a consumer is not cooperating <u>by supplying with</u> the requested information, the consumer will not be eligible for SCC benefits. The consumer may become eligible again when he or she meets SCC requirements in part III of this chapter, or when thirty days have passed since the consumer became eligible.</p> <p><i>[Other subsections of this WAC are unchanged.]</i></p>

Reason:

- The description of the “child care plan” in proposed subsection (5) duplicates the definition in WAC 170-290-3510, making the description unnecessary.
- Deleted wording in subsection (8) is not consistent with department practice and is deleted or changed as appropriate. A consumer may reapply for SCC benefits without a waiting period.

<p>WAC 170-290-3590 SCC contractor's responsibilities to consumers. <i>[Subsection (7) only]</i> SCC contractors are community agencies that contract with DEL to perform SCC program authorizations. The SCC contractors and their staff must:</p> <p>...(7) Authorize payments only to a child care provider of a consumer's choice who meets the requirements in WAC 170-290-3750, and who allows the consumer to access his or her children whenever they are in care;</p>	<p>WAC 170-290-3590 SCC contractor's responsibilities to consumers.</p> <p>SCC contractors are community agencies that contract with DEL to perform SCC program authorizations. The SCC contractors and their staff must:</p> <p>...(7) Authorize payments only to a child care provider of a consumer's choice who meets the requirements in WAC 170-290-3750, and who allows the consumer to access his or her children whenever they are in care;</p> <p><i>[Other subsections of this rule are unchanged.]</i></p>
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Reason: The deleted wording in WAC 170-290-3590(7) duplicates a requirement in the DEL child care licensing rules and DEL contracts with seasonal day camps.

<p>WAC 170-290-3640 Determining income eligibility and copayment. <i>[Subsection (2) only]</i></p> <p>(2) If a consumer's family's income is above the FPG as defined in WAC 170-290-0075, his or her family is not eligible for the SCC program.</p>	<p>WAC 170-290-3640 Determining income eligibility and copayment.</p> <p>(2) If a consumer's family's income is above <u>two hundred percent of the</u> FPG as defined in WAC 170-290-0075, his or her family is not eligible for the SCC program.</p> <p><i>[Other portions of this WAC section are unchanged.]</i></p>
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Reason: The words “two hundred percent of” were left out inadvertently. The change makes this rule consistent with WAC 170-290-0075.

WAC 170-290-3650 Change in copayment	WAC 170-290-3650 Change in copayment
<p>A consumer's SCC program copayment could change when:</p> <ul style="list-style-type: none"> (1) DEL makes a mass change in subsidy benefits due to a change in law or program funding; (2) The consumer's family size increases; (3) The SCC contractor makes an error in the consumer's copayment computation; (4) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication; or (5) The consumer is approved for a new eligibility period; or (6) If a consumer's copayment changes during his or her eligibility period, the change is effective: <ul style="list-style-type: none"> (a) On the first day of the month following the change, when: <ul style="list-style-type: none"> (i) The report is made to the SCC contractor or the information is learned by the contractor within ten or more days after the change as provided in WAC 170-290-3570; (ii) The consumer receives ten days written notice; and (iii) The copayment is increasing; or (b) On the first day of the month that the change occurred when: <ul style="list-style-type: none"> (i) The report is made to the SCC contractor or the information is learned by the contractor within ten days or less after the change as provided in WAC 170-290-3570; and (ii) The copayment is decreasing. 	<p>(1) A consumer's SCC program copayment could change when:</p> <ul style="list-style-type: none"> (1a) DEL makes a mass change in subsidy benefits due to a change in law or program funding; (2b) The consumer's family size increases; (c) The SCC contractor makes an error in the consumer's copayment computation; (d) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication; or (e) The consumer is approved for a new eligibility period; or (2) If a consumer's copayment changes during his or her eligibility period, the change is effective: <ul style="list-style-type: none"> (a) On the first day of the month following the change, when: <ul style="list-style-type: none"> (i) The report is made to the SCC contractor or the information is learned by the contractor within ten or more days after the change as provided in WAC 170-290-3570; (ii) The consumer receives ten days written notice; and (iii) The copayment is increasing; or (b) On the first day of the month that the change occurred when: <ul style="list-style-type: none"> (i) The report is made to the SCC contractor or the information is learned by the contractor within ten days or less after the change as provided in WAC 170-290-3570; and (ii) The copayment is decreasing.

Reason:

Subsections of this rule are renumbered for clarity. Subsection (1) and subsection (2) in the final rule are separate requirements.

WAC 170-290-3750 Eligible child care providers. [Subsection (4) only]	WAC 170-290-3750 Eligible child care providers.
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<p>To receive payment under the SCC program, a consumer's child care provider must be:</p> <p>...(4) Seasonal day camps that have a contract with DEL to provide subsidized child care and are:</p> <ul style="list-style-type: none"> (a) Of a duration of three months or less; (b) Engaged primarily in recreational or educational activities; and (c) Accredited by the American Camping Association (ACA). 	<p>To receive payment under the SCC program, a consumer's child care provider must be:</p> <p>...(4) Seasonal day camps that have a contract with DEL to provide subsidized child care and are:</p> <ul style="list-style-type: none"> _____ (a) Of a duration of three months or less; _____ (b) Engaged primarily in recreational or educational activities; and _____ (c) Accredited by the American Camping Association (ACA). <p><i>[Other subsections of this rule are unchanged.]</i></p>

Reason:

The wording in subsection (4)(a), (b) and (c) is covered in the DEL contracts with eligible seasonal day camps, and is not needed in the rule.

WAC 170-290-3790 When additional SCC subsidy payments are authorized. <i>[First paragraph only]</i>	WAC 170-290-3790 When additional SCC subsidy payments are authorized.
<p>DEL may authorize additional SCC program subsidy payments for more than the basic child care subsidy daily rate when:...</p>	<p>DEL may authorize additional SCC program subsidy payments for more than the basic child care subsidy daily rate when:...</p> <p><i>[Other subsections of this rule are unchanged.]</i></p>

Reason:

This change was made for clarity and does not change the intent of the rule.

WAC 170-290-3860 Right to request an administrative hearing.	WAC 170-290-3860 Right to request an administrative hearing.
<p>(1) SCC consumers have a right to request a hearing under chapters 170-03 WAC and 34.05 RCW on any action affecting SCC benefits except for mass changes resulting from a change in policy or law.</p> <p>(2) Licensed or certified child care providers may request hearings under this chapter, chapters 170-03 WAC and 34.05 RCW, only for SCC overpayments.</p> <p>(3) To request an administrative hearing, consumers must write to the office of administrative hearings at the address in WAC 170-03-0070 within ninety days of the date any decision of an action is received.</p>	<p>(1) SCC consumers, <u>licensed or certified child care providers, and DEL-contracted seasonal day camps must follow have a right to request a hearing under chapters chapter 170-03 WAC to request a hearing and 34.05 RCW.</u></p> <p>(2) SCC consumers have a right to request a hearing on any action affecting SCC benefits except for mass changes resulting from a change in policy or law.</p> <p>(2)(3) <u>Under this part, licensed or certified child care providers, or DEL-contracted seasonal day camps have a right to may request hearings under this chapter, chapters 170-03 WAC and 34.05 RCW, only for SCC overpayments.</u></p> <p>(4)(3) <u>A SCC consumer, licensed or certified child care provider, or DEL-contracted seasonal day camp must make a request for a hearing as required by WAC 170-03-</u></p>

Rule as Proposed in WSR 09-12-115	Rule as being adopted
	<p>0050 and 170-03-0060.</p> <p><u>(a) A SCC consumer must request a hearing</u> To request an administrative hearing, consumers must write to the office of administrative hearings at the address in WAC 170-03-0070 within ninety days of the date any decision of an action is received.</p> <p><u>(b) A licensed or certified child care provider or DEL-contracted seasonal day camp must request a hearing within twenty eight days of the date a decision is received.</u></p>

Reason:

As a result of comment received, the rule was changed for clarity and accuracy. DEL will propose an amendment to WAC 170-05-0050 (DEL Hearing Rules) to make that WAC consistent with the change to WAC 170-290-3865(4)(a) allowing SCC consumers 90 days to appeal a decision affecting the consumer's SCC benefits, which has been department practice.

C. Summary of Issues Raised in Public Comments on the Proposed Rules, and DEL's Responses

(1) Comments regarding WCCC rules. The table below describes the issues raised in public comments on the DEL child care subsidy rule changes proposed on June 3, 2009 (filed as WSR 09-12-115) and DEL's responses. Comments have been edited and summarized where appropriate. Each issue is listed once, even if more than one person or group raised the same issue in their comments.

Summary of Issues From public comments on the DEL Subsidy WAC revisions proposed as WSR 09-12-115	Department of Early Learning Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.
<p>WAC 170-290-0040 and 170-290-0045 – Approved activities for WCCC consumers.</p> <p>Comment: Why is child care not covered during hours when the parent is attending (four-year) college, but is covered while the</p>	<p>The proposed rule was not changed as a result of this comment.</p> <p>The current rules allow WCCC consumers who work 20 or more hours per week in paid employment or 16 or more hours per week in</p>

Summary of Issues From public comments on the DEL Subsidy WAC revisions proposed as WSR 09-12-115	Department of Early Learning Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.
<p>parent is at work? If adult education, two-year certificate programs and vocational program are covered, why not a four-year program?</p>	<p>state or federal work-study to participate in adult basic education, ESL classes, or high school diploma or GED completion with no limits. Additionally, the rule allows employed consumers to have limited child care coverage during employer-required training. Further, the rule allows consumers to request child care for study time and travel time. The 36-month limit applies to vocational education.</p> <p>We agree education and training are critical to improved employment opportunities and earning a living wage. This is an area that DEL is looking at closely, as we strongly believe that education across all ages is important to supporting early education.</p> <p>Changing the rule as requested could increase the cost of the WCCC program. Currently, DEL is constrained from making rule changes that would impact the state budget.</p>
<p>WAC 170-290-0045 – Approved activities for consumers not receiving TANF.</p> <p>Comment: As a single parent for two children and attend college full time, I was told that in order to receive child care subsidies that I would have to work 20 or more hours a week, on top of being a full-time student. This would be near impossible with a 3-year-old and a newborn. Childcare (should) be available for mothers and students who are attending college full-time without there being a work requirement.</p>	<p>The proposed rule was not changed as a result of this comment.</p> <p>See DEL's response to the above comment regarding WAC 170-290-0040 and 0045.</p>

Summary of Issues From public comments on the DEL Subsidy WAC revisions proposed as WSR 09-12-115	Department of Early Learning Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.
<p>WAC 170-290-0125 – Eligible child care providers.</p> <p>Take a look at the subsidies (for those) who attend a program that is licensed for the school year but is not licensed during the summer (because the program must switch to another facility for the summer). Children should be able to continue going to the same continuous program year round. We lose a lot of kids and parents who have to make other arrangements – I would like the rules to be easy for parents.</p>	<p>The proposed rule was not changed as a result of this comment.</p> <p>DEL understands your concerns and agrees that having continuous coverage year round allows for greater continuity of care for children who are receiving subsidies. In particular, providing year round coverage would allow parents to plan for the future and ensure that their children have greater stability in their child care arrangements. Making the rules easier for parents and providers to access child care subsidies will help to achieve this goal. DEL is working internally and with the Department of Social and Health Services to review child care subsidy rules and to establish policies and procedures that provide more seamless service delivery and greater continuity of care for children.</p> <p>However, licensed and certified facilities are inspected by DEL and other agencies to assure that the spaces meet minimum standards to protect the health and safety of children. The school-year program should consider using a summer facility that could meet inspection standards and request an adjustment to the program's child care license.</p>
<p>WAC 170-290-0138(7)(b) and 170-290-0268(1)(b) – Signing children in and out of care.</p> <p>Comment: Approximately 6,000 in-home/relative care providers care for their own relatives or neighbors' children. These providers do not operate as small businesses. Two-thirds of these providers care for children in the child's own home, so these children are not in "attendance" in the same way they are in a professional (licensed) child care home. Instead, the</p>	<p>The proposed rules were changed as a result of this comment.</p> <p>DEL understands that arrangements are generally less formal for in-home/relative providers than for licensed child care providers. Full signatures are required for licensed child care providers under WAC 170-151-460 (school-age child care centers), WAC 170-295-7030 (child care centers), and WAC 170-296-0520 (family home child care), but are not required for in-home/relative (license-exempt) providers.</p>

Summary of Issues From public comments on the DEL Subsidy WAC revisions proposed as WSR 09-12-115	Department of Early Learning Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.
<p>relative or neighbor comes to the child's home to care for them. Several years ago, this group of providers was required to keep "attendance" records for the first time. They keep records of their hourly care for these children, by have parents put their initials on a sheet. The State has provided no reason for the change, requiring parents to sign-in/sign-out their children in their <u>own</u> homes or in their relative's home. The change is not necessary, in this less formal care, and should not be adopted. The rules would make the full signature sign-in/sign-out sheets the <u>exclusive</u> verification of care provided. If a parent forgets to sign the sheet, or puts their initials on the sheet, the provider will not be paid under this new proposal. The rule, if enacted, would mean the parent cannot verify to the State in a different way that care was actually provided. There is no reason for this rule. If a parent can verify that the child was in the care of the provider, that verification should be acceptable in proving the care was actually provided. If there are witnesses, certified statements, or other methods of verification, or sign-in/sign-out sheets, then the provider should be paid for that care provided. This proposed rule takes away a provider's and parent's right to provide proof in their own defense, if questioned about child care provided. All people have the right to defend themselves with whatever evidence they have and there should not be a limit placed on how a provider or parent can verify care provided. This WAC proposal should not be adopted.</p> <p>The proposed changes outlined above allow for inconsistency in the subsidy system.</p>	<p>DEL nevertheless believes that there is still a need for these providers to maintain accurate records for billing and audit purposes, child health and safety, liability issues, and to ensure compliance with the collective bargaining agreement.</p> <p>In balancing these competing concerns, DEL has made the following amendments:</p> <ul style="list-style-type: none"> ○ WAC 170-290-0138 (In-home/relative providers – Responsibilities): Proposed subsections (7) and (8) are deleted, and new subsections (7) to (10) are added. The proposed new subsections continue the previous WAC requirements regarding record-keeping and availability of attendance records. However, rather than requiring full daily signatures, new subsection (8) requires that providers and the consumer need to review and verify the attendance and sign and date the records at least weekly, verifying the accuracy of the dates and times. The substance of proposed subsection (8) is moved to a new subsection (10) in WAC 170-290-0030 to clarify that this is a consumer responsibility. ○ WAC 170-290-0268 (Payment discrepancies – Provider overpayments): Proposed subsection (1)(b) is amended to provide that provider overpayments are established when that provider bills without attendance records that support their billing. ○ WAC 170-290-0030 (Consumers' responsibilities): Consistent with the changes to WAC 170-290-0138 and

Summary of Issues From public comments on the DEL Subsidy WAC revisions proposed as WSR 09-12-115	Department of Early Learning Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.
<p>They are unnecessary and ultimately will harm children, working parents, and their care providers.</p>	<p>0268, the department also is revising proposed WAC 170-290-00030, subsection (10), renumbered as subsection (9), by requiring consumers to document their children's attendance, rather than sign their children in and out of child care, as applicable, for each type of provider. A new subsection (10) is also added requiring consumers to provide to their in-home/relative providers the names, addresses, and telephone numbers of persons who are authorized to pick up their children from care.</p>
<p>WAC 170-290-0200 through 170-290-230 – Child care subsidy rates.</p> <p>Comment: Eastern Washington should have the same child care subsidy rates as the west side of the state. In some cases Eastern Washington providers receive \$20 per day less than Western Washington providers.</p>	<p>The proposed rules were not changed as a result of this comment.</p> <p>In general, DEL provides different child care subsidy rates based on the cost of providing care, which varies by region, the type of care arrangement, the age of the child, and other factors.</p> <p>For example, as noted in the Washington State 2008 Child Care Survey (also known as the "Market Rate Survey", see http://www.del.wa.gov/publications/research/docs/LicensedChildCareInWashingtonState_2008.pdf), Region 4 (King County) reported the highest monthly income for child care center staff by region (p. 18). Available child care was also the most limited in Region 4; across all age groups, fewer centers reported having at least one vacancy in that region than the other regions (p. 7). Depending on the age of the child and whether care occurs at a center or home, child care in Washington State can cost a family from \$5,391 to \$10,344 a year (p. 24).</p> <p>Since, on average, the cost of providing child care is generally more expensive to provide in</p>

Summary of Issues From public comments on the DEL Subsidy WAC revisions proposed as WSR 09-12-115	Department of Early Learning Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.
	<p>Western Washington than Eastern Washington, child care subsidies reflect the difference in costs. However, under federal rules, DEL periodically reviews and updates its market rate survey to reflect the most up-to-date rates charged by providers in different regions of the state.</p>
<p>WAC 170-290-225, 170-290-230 and 170-290-0235 - Children with special needs.</p> <p>Comment: Children with special needs are primarily cared for in-home child care providers, both in professional family homes and in less formal relative/in-home care. The proposed WAC changes add the phrase “while in child care” to all three sections of the WAC. Currently, if a parent has a report (IHP, IEP, IFP or other medical evidence) from a health care professional, detailing the special needs of a child, the child care provider may use that report to document the child’s special needs. Then, the child care provider is required to outline how he or she will meet the special needs of the child. It is not the responsibility of the health care professional to know all of the unique features of the child care setting and provider, and then detail the specific needs of the child while in child care. This is an unreasonable, unnecessary, and costly WAC proposal, and could ultimately cause special needs children to lose quality child care.</p> <p>The unintended consequence of this proposed WAC will be that providers and centers will not be able to care for special needs children. Health care professionals cannot be expected to know all of the unique situations in the variety of child care situations that parents choose for their</p>	<p>The proposed rule was changed as a result of this comment.</p> <p>DEL has deleted the phrase “while in child care” added in the proposed WAC 170-290-0225(2), 170-290-0230(2), and 170-290-0235(3), pending further discussion with stakeholders.</p>

Summary of Issues From public comments on the DEL Subsidy WAC revisions proposed as WSR 09-12-115	Department of Early Learning Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.
<p>children. They are health experts, not child care experts. Additionally, parents will be required to get additional reports every time a child goes to a different child care setting. In fact, they would have to have additional reports for center care, professional family homes, and in-home/relative care. This will be costly and is not necessary. The current documentation system for special needs care is adequate and the proposed WAC change will harm special needs children and their families. These WAC proposals will harm special need children and their families and should not be adopted.</p> <p>The proposed changes outlined above allow for inconsistency in the subsidy system. They are unnecessary and ultimately will harm children, working parents, and their care providers.</p>	
<p>WAC 170-290-0235(4)(b) and 170-296-0240(1)(b) – Child care subsidy rates.</p> <p>Comment: The proposed WAC will harm in-home/relative care providers. The change allows the state to pay these providers less than \$2.17/\$2.20 per hour. The proposed WAC allows the state to pay the lesser amount of either the above rate or less than that rate. The rate is a negotiated rate in a legally binding collectively bargained labor agreement. The proposed WAC is written in such a way to allow the state to pay less than the negotiated, legally binding rate. In-home/relative providers do not have “private pay” rates, because they do not do private pay child care. They should be paid the negotiated, legally binding rates. This proposed WAC is a violation of the current collective</p>	<p>The proposed rule was changed as a result of this comment.</p> <p>DEL has deleted WAC 170-290-0235(4)(b) and 170-290-0240(1)(b) and made other technical amendments as necessary to those sections, pending further review of applicable federal laws and rules.</p>

Summary of Issues From public comments on the DEL Subsidy WAC revisions proposed as WSR 09-12-115	Department of Early Learning Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.
<p>bargaining agreement and should not be adopted. (continued)</p> <p>The proposed changes outlined above allow for inconsistency in the subsidy system. They are unnecessary and ultimately will harm children, working parents, and their care providers.</p>	
<p>WAC 170-290-0280 – Hearing rights.</p> <p>Comment: Proposed new sections on hearing rights are inaccurate. Suggested changes:</p> <p>WAC 170-290-0280 Right to request an administrative hearing.</p> <p>(1) WCCC consumers have a right to request a hearing under chapter 388-02 WAC on any action affecting WCCC benefits except for mass changes resulting from a change in policy or law.</p> <p>(2) Licensed or certified child care providers or in-home/relative providers may request hearings under this chapter and chapter 388-02 WAC only for WCCC overpayments.</p> <p>(3) To request a hearing, a consumer, the licensed/certified provider, or in-home/relative provider: (a) Contacts the <u>DSHS</u> office which sent them the notice; or (b) Writes to the office of administrative hearings, P.O. Box 4248<u>98</u>, Olympia, WA 98504-248<u>98</u>; and (c) [continued]</p>	<p>The proposed rule was changed as a result of this comment.</p> <p>DEL agrees with the suggested changes to WAC 170-290-0280 and has incorporated them into this rule.</p> <p>In response to the question regarding subsection (5) of this section, WAC 170-290-3910 and 170-290-3920 refer to the WAC numbers from an earlier draft version of the rules. This cross reference was not updated in the proposed rules. The correct references are to WAC 170-290-3860 and 170-290-3865 in the proposed and final rules regarding hearing rights under the Seasonal Child Care program.</p>

Summary of Issues From public comments on the DEL Subsidy WAC revisions proposed as WSR 09-12-115	Department of Early Learning Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.
<p>Makes the request for a hearing within: (i) Ninety days of the date a decision is received for consumers; or (ii) Twenty-eight days of the date a decision is received for providers.</p> <p>(4) The office of administrative hearings administrative law judge enters <u>initial or final orders as provided</u> orders in overpayment cases under WAC 388-02-0217. <u>Initial orders may be appealed to a DSHS review judge under chapter 388-02 WAC.</u></p> <p>(5) To request a hearing under the seasonal child care program, see WAC 170-290-3910 and 170-290-3920. <i>[Where are WAC 170-290-3910 and 170-290-3920?]</i></p>	

(2) Comments regarding SCC rules. DEL is moving the Seasonal Child Care (SCC) rules currently in WAC 170-292 into WAC chapter 170-290. In November 2008, DEL proposed changes to the Seasonal rules (filed as WSR 08-22-102), and we received several public comments on that proposal. Those comments on the November proposal are summarized below, except that the comment about WAC 170-292-3860 was received during the proposed rule comment period in June and July 2009. Although the November 2008 proposed rules were later withdrawn, we considered the comments in preparing the rules proposed in June 2009 as WSR 09-15-115 as required by RCW 34.05.340.

<p>Summary of Issues Raised in comments on the DEL Seasonal Child Care revisions in WAC 170-292 proposed in November 2008 as WSR 08-22-102</p> <p><i>Note: All sections in WAC chapter 170-292 noted in the left column are now being repealed – the right-hand column notes the proposed new sections in WAC 170-290 with the same or similar SCC content. Some comments are edited for length and clarity. Each issue is listed only once even if more than one person or group raised the same concern.</i></p>	<p>Department Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.</p> <p>Where appropriate, this column notes the proposed new SCC WAC that contains the similar content or requirement as in the amended WAC proposed in November 2008.</p>
<p>General comment on the proposed rule: This proposal will have a great impact in my county. Parents who in order to support their families will be forced to leave their children alone or take them into the fields where the risks are endless. We should do everything we can to find another alternative. Many seasonal farm workers are undocumented. They are here to help our crops and help agriculture in our community. By removing this program we will be faced with farm workers potentially choosing not to come to our community, which will significantly affect the economy. Many of the efforts and new investments by DEL to support children's development and early learning as a priority in our state will be lost.</p>	<p>The proposed rule was withdrawn. DEL has withdrawn the SCC rules proposed in November 2008. The SCC rules proposed in June 2009 (filed was WSR 09-12-115) did not require verification of the child's citizenship or legal resident status.</p>

<p>Summary of Issues Raised in comments on the DEL Seasonal Child Care revisions in WAC 170-292 proposed in November 2008 as WSR 08-22-102</p>	<p>Department Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.</p>
<p>General comment on the proposed rule. DEL's proposed SCC rules are vague and do not begin to answer the many implementation questions they raise, are unenforceable, and should therefore be withdrawn.</p>	<p>The proposed rule was withdrawn. DEL has withdrawn the rules proposed in November 2008 pending further consultation. The SCC rules proposed in June 2009 (filed was WSR 09-12-115) did not require verification of the child's citizenship or legal status.</p>
<p>General comment on the SCC program. Comment: More funds are needed to serve families. There are countless families that get turned away each year because funds run out early in the season. Seasonal child care should be state funded. Under PRWORA, 8 USCA 1621, a state may elect to provide state or local benefits to a person otherwise ineligible, but enacting a state law. DEL should ask the Legislature to provide a seasonal child care program for children whose life and safety would be at risk if child care services were unavailable.</p>	<p>The proposed rule was not changed as a result of this comment. DEL appreciates this comment and suggestion. SCC rules set consumer eligibility, child care benefits, and other requirements needed to implement the program. However, funding for SCC is not established in the rule.</p>
<p>WAC number not specified There should be a policy in place that prevents a contractor from having a worker administer the eligibility process when the migrant family or the child care provider selected by the family is a relative of the worker.</p>	<p>The proposed rule was not changed as a result of this comment This will be addressed in the procedural manual for contractors. DEL appreciates this suggestion.</p>
<p>WAC number not specified Comment: What is going to happen to SCC contractors if they refuse to verify child eligibility under these rules?</p>	<p>The proposed rule was withdrawn. DEL has withdrawn the rules proposed in November 2008 pending further consultation. The new SCC rules in Part III of WAC chapter 170-290, proposed in June 2009 (filed was WSR 09-12-115), did not require verification of the child's citizenship or legal resident status. WAC 170-292-0002 is repealed.</p>

<p>Summary of Issues Raised in comments on the DEL Seasonal Child Care revisions in WAC 170-292 proposed in November 2008 as WSR 08-22-102</p>	<p>Department Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.</p>
<p>WAC 170-292-0002(9) - Definition of “eligible child”: Comment: This rule should define “eligible children” as children whose parents work in temporary seasonal child care. There is no amnesty, meaning children cannot become legal residents of the USA at this time. DEL should stay away from self-declarations since when we used self-declaration for income and then requested documentation families were made not eligible. Self-declaration will put families at risk of declaring falsely since they are trying to make sure their children are safe while the parents are at work. This rule will have a profound effect on families with children of mixed eligibility – some legal children and some not. It will lead to confusion with clients, contractors, providers and the providers’ union.</p>	<p>The proposed rule was withdrawn. DEL has withdrawn the rules proposed in November 2008 pending further consultation. The new SCC rules in Part III of WAC chapter 170-290, proposed in June 2009 (filed was WSR 09-12-115), did not require verification of the child’s citizenship or legal resident status. WAC 170-290-0002 is repealed.</p>
<p>WAC 170-292-0002(9) - Definition of “eligible child”: Falsification of self-declaration can later lead to disqualification of the client for legal status and citizenship. In a future audit, it can lead to parent overpayments.</p>	<p>The proposed rule was withdrawn. DEL has withdrawn the rules proposed in November 2008 pending further consultation. The new SCC rules in Part III of WAC chapter 170-290, proposed in June 2009 (filed was WSR 09-12-115), did not require verification of the child’s citizenship or legal resident status. WAC 170-292-0002 is repealed.</p>
<p>WAC 170-292-0002(9) Definition of “eligible child”: The (federal) policy instructions that DEL is attempting to implement is incorrect. ACF (Administration for Children and Families) Policy Instruction PI-2008-01 is inconsistent with requirements found in the Personal Responsibility and Work Opportunity Act of 1996, codified as 8 USC 1611, the Department of Justice and Health and Human Services interpretations</p>	<p>The proposed rule was withdrawn. DEL has withdrawn the rules proposed in November 2008 pending further consultation. The new SCC rules in Part III of WAC chapter 170-290, proposed in June 2009 (filed was WSR 09-12-115), did not require verification of the child’s citizenship or legal resident status. WAC 170-292-0002 is repealed.</p>

Summary of Issues Raised in comments on the DEL Seasonal Child Care revisions in WAC 170-292 proposed in November 2008 as WSR 08-22-102	Department Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.
<p>of PRWORA. DEL is not required to verify citizenship and immigration status when non-profit, charitable organizations determine SCC eligibility. No legal authority is cited instructions in PI-2008-01 – it reverses the clear policy stated in ACF PI-1998-98 that verification is not required when child care eligibility is determined by a non-profit organization and not by a governmental agency.</p> <p>DEL’s definition of “eligible children” as ‘children who are legally residing in the country as defined in the PRWORA’ has no meaning. PRWORA does not define the term “legally residing in the country.” The policy instruction from HHS appears to be legally inconsistent, vague and very possibly incorrectly based.</p>	
<p>WAC 170-290-0002(9) – Definition of “eligible child”</p> <p>The proposed WAC does not offer guidance for procedures to be used to determine eligibility. Will “legal status” be documented by the applicant’s statement, or will the applicant be required prove a child’s eligibility by submitting documents (e.g., birth certificates, passport, green card)?</p> <p>The proposed self-declaration for eligibility puts desperate clients in a difficult ethical situation. Our most vulnerable children could be left in unsafe environments without access to licensed child care, such as staying at home with siblings, staying in hot cars, (or) left without appropriate supervision, which could then become CPS (Child Protective Services) reportable circumstances.</p> <p>If one parent is going to have to stop working to take care of the children it’s going to affect the community, because</p>	<p>The proposed rule was withdrawn.</p> <p>DEL has withdrawn the rules proposed in November 2008 pending further consultation. The new SCC rules in Part III of WAC chapter 170-290, proposed in June 2009 (filed was WSR 09-12-115), did not require verification of the child’s citizenship or legal resident status. WAC 170-292-0002 is repealed.</p>

Summary of Issues Raised in comments on the DEL Seasonal Child Care revisions in WAC 170-292 proposed in November 2008 as WSR 08-22-102	Department Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.
<p>they are going to look for other resources, because as far as agricultural work both parents need to work in order to support the family.</p> <p>Citizenship status should not be required of children being subsidized. The parents are going to be here whether legal or not and the kids shouldn't have to pay for their parent's decision by being left out of child care or supervision.</p>	
<p>WAC 170-292-0002(9) – Definition of “eligible child.”</p> <p>Comment: This is going to significantly jeopardize the safety of children. We find it unbelievable that a program designed to help seasonal farm workers would eliminate services to undocumented children. Many seasonal farm workers are undocumented. By removing SCC we are going to be faced with farm workers choosing not to come to our communities, which will significantly affect the economy, farm owners, farm workers and their families. Farm workers will be faced with having a parent needing to provide child care, affecting their family financial resources. Or, they will leave the children home with siblings or someone who is unqualified to provide care, or bring the children to the fields exposing them to unsafe conditions. This is against the mission of (the SCC contractor) and conflicts with other programs that do not require this citizenship documentation. We don't want clients being fearful of being screened (for eligibility) – they can be easily confused when there are multiple programs.</p>	<p>The proposed rule was withdrawn.</p> <p>DEL has withdrawn the rules proposed in November 2008 pending further consultation. The new SCC rules in Part III of WAC chapter 170-290, proposed in June 2009 (filed was WSR 09-12-115), did not require verification of the child's citizenship or legal resident status. WAC 170-292-0002 is repealed.</p>

Summary of Issues Raised in comments on the DEL Seasonal Child Care revisions in WAC 170-292 proposed in November 2008 as WSR 08-22-102	Department Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.
<p>WAC 170-292-0002(9), 170-292-0025, 170-292-0115, 170-292-0140 – Verifying child eligibility for SCC.</p> <p>Comment: The rules fail to state which entities will be administering the SCC program in the future, which entities will undertake applicant verification, and what will the procedures for verification be. Will DEL (contract) only with non-profit agencies that agree to verify, will DEL itself verify child eligibility, or non-profits that refuse to verify will lose their SCC contract?</p> <p>Is DEL planning to proposed two sets of WAC, one now, one later to fully implement ACF-PI-2008-01? If so, partial implement deprives the public of a full opportunity to comment on how the SCC program will be changed.</p> <p>The vague rules result in implementation issues that may not be resolvable by non-profit agencies due to lack of resources.</p>	<p>The proposed rules were withdrawn.</p> <p>DEL has withdrawn the rules proposed in November 2008 pending further consultation. The new SCC rules in Part III of WAC chapter 170-290, proposed in June 2009 (filed was WSR 09-12-115), did not require verification of the child's citizenship or legal resident status. WAC 170-292-0002, 0025, 0115, and 0140 are repealed.</p>
<p>WAC 170-292-0002(9), 170-292-0025, 170-292-0115, 170-292-0140 – Verifying child eligibility for SCC.</p> <p>ACF cannot compel DEL to verify immigration status where DEL relies upon charitable, non-profit organizations to determine eligibility for SCC services. [This comments quoted portions of 8 USC. 1642(d) as amended by Public Law 104-208, and the U.S. Department of Justice <i>Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Act of 1996</i>, as published in the Federal Register at 62 FR 61344 in 1997.0]</p> <p>The SCC contractors, and not DEL, are the "benefit granting agencies" under federal</p>	<p>The proposed rules were withdrawn.</p> <p>DEL has withdrawn the rules proposed in November 2008 pending further consultation. The new SCC rules in Part III of WAC chapter 170-290, proposed in June 2009 (filed was WSR 09-12-115), did not require verification of the child's citizenship or legal resident status. WAC 170-292-0002, 0025, 0115, and 0140 are repealed.</p>

Summary of Issues Raised in comments on the DEL Seasonal Child Care revisions in WAC 170-292 proposed in November 2008 as WSR 08-22-102	Department Response. Was the Proposed Rule changed as a result of this comment? If not, explain why.
<p>rules. If so, DEL has no obligation under PRWORA to verify an applicant's citizenship or immigration status. If DEL believes it should adopt regulation that require SCC contractors to verify immigration status, the proposed regulations must recognize that those contractors who are non-profit charitable organizations are exempt from this requirement.</p>	
<p>WAC 170-292-0002(9), 170-292-0025, 170-292-0115, 170-292-0140 – Verifying child eligibility for SCC. DEL should designate SCC services as “public education” so that the services would not be defined as a “public benefit” under 8 USC 1615(a) and 1643 requiring verification of citizenship status. That way, all children would have equal access to high quality child care in the state. The classification of the program, with its embedded educational components required and directed by the state government program design, suggest that the educational service itself may distinguish and thus eliminate the program from the ACF policy instruction.</p>	<p>The proposed rules were withdrawn. DEL has withdrawn the rules proposed in November 2008 pending further consultation. The new SCC rules in Part III of WAC chapter 170-290, proposed in June 2009 (filed was WSR 09-12-115), did not require verification of the child's citizenship or legal resident status. WAC 170-292-0002, 0025, 0115, and 0140 are repealed.</p>
<p>WAC 170-292-0002(9), 170-292-0025, 170-292-0115, 170-292-0140 – Verifying child eligibility for SCC. Comment: The WAC proposal is premature and will need to be revised, as this U.S. Health and Human Services instruction (ACF PI-2008-01) will most likely be reviewed within a year by the new administration in Washington, D.C. The 2008 policy instruction is inconsistent with the 1998 HHS instruction (ACYF-PI-CC-98-08). It makes no sense for</p>	<p>The proposed rules were withdrawn. DEL has withdrawn the rules proposed in November 2008 pending further consultation. The new SCC rules in Part III of WAC chapter 170-290, proposed in June 2009 (filed was WSR 09-12-115), did not require verification of the child's citizenship or legal resident status. WAC 170-292-0002, 0025, 0115, and 0140 are repealed.</p>

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<p>Washington State to spend its dwindling valuable resources to change its WAC prematurely until the new administration has a chance to review, revise and/or reverse the 2008 instruction. If so, DEL would need to re-open the WAC process again to match the new or revised federal policy. DEL should delay any WAC rulemaking until federal policy is reconsidered in 2009.</p> <p>ACF policy instruction PI-2008-01 is incorrect and should be disregarded. This policy instructions is contrary to the PRWORA and will likely be withdrawn.</p>	
<p>WAC 170-292-0002(9), 170-292-0025, 170-292-0115, 170-292-0140 – Verifying child eligibility for SCC.</p> <p>Comment: The proposed WAC is not enforceable in these extreme economic budgetary times. Even if the federal ACF program instruction in question was valid and consistent with other federal guidelines, which it is not, the state must decide if it can actually create an enforceable WAC to match it. With the current budget deficits, there is no way a WAC change requiring verification of citizenship can be enforced.</p>	<p>The proposed rules were withdrawn.</p> <p>DEL has withdrawn the rules proposed in November 2008 pending further consultation. The new SCC rules in Part III of WAC chapter 170-290, proposed in June 2009 (filed was WSR 09-12-115), did not require verification of the child's citizenship or legal resident status. WAC 170-292-0002, 0025, 0115, and 0140 are repealed.</p>
<p>WAC 170-292-0002(9), 170-292-0025, 170-292-0115, 170-292-0140 – Verifying child eligibility for SCC.</p> <p>Comment: The proposed SCC WAC is simply the wrong direction for the guardians of Washington State's children. The real question is : Is the proposal good for our children? It is not. Children of</p>	<p>The proposed rules were withdrawn.</p> <p>DEL has withdrawn the rules proposed in November 2008 pending further consultation. The new SCC rules in Part III of WAC chapter 170-290, proposed in June 2009 (filed was WSR 09-12-115), did not require verification of the child's citizenship or legal resident status. WAC 170-292-0002, 0025, 0115, and 0140 are</p>

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<p>seasonal agricultural workers deserve quality child care under the SCC program. Discontinuing the program would put children in unsafe child care situations.</p>	<p>repealed.</p>
<p>WAC 170-292-0115 SCC application process. The application process for families is very bureaucratic and difficult to understand. How can we make the process more user-friendly? Many of the parents that access seasonal child care are in crisis themselves. The existing application process is incredibly complex and more work is needed on both ends to really make this a more user-friendly process for parents. The rule should clarify that families are not determined eligible just by submitting paperwork. They must also attend an interview.</p>	<p>The proposed rule was changed as a result of this comment The revised rule was proposed as new WAC 170-290-3510 with wording that helps clarify the application process. The revised rule states that the applicant must meet with the contractor as part of the application process. WAC 170-292-0115 is repealed.</p>
<p>WAC 170-292-0140 When do child care subsidies start? The amended rule should clarify so that the SCC contractor and family knows if the family is still eligible for the program, thereby reducing the risk that a child care provider is caring for children who are no longer eligible, and will notify the family of the eligibility end date so they can make proper arrangements before their eligibility end date. The re-eligibility rule leaves providers without knowing if families have qualified when families have to be rescheduled due to lack of income information required to determine their continued eligibility. Families should be required to request an appointment before their 6-month end date</p>	<p>The proposed rule was changed as a result of this comment See new WAC 170-290-3565, -3590, -3665, and -3840 that refer to the Child Care Plan and the consumer's eligibility end date. The eligibility end date is stated in the Child Care Plan and the Social Service notice that providers currently receive. New WAC 170-290-3840 states that families must contact the SCC Contractor prior to the eligibility end date or there may be a penalty. The rule is consistent with families that first start in SCC. WAC 170-292-0140 is repealed.</p>

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<p>so that contractors can determine continued eligibility. Allowing families 30 days to provide all info necessary is too much time. If they call on the last day of the eligibility period, they must provide the information when they are scheduled to renew. If information is not provided to determine continued eligibility at that time, the program should cover only from the day the information is provided.</p>	
<p>WAC 170-290-3860 Right to request an administrative hearing.</p> <p>The rule as proposed is not accurate. Suggested changes:</p> <p>(1) SCC consumers have a right to request a hearing under chapters 170-03 WAC and 34.05 RCW on any action affecting SCC benefits except for mass changes resulting from a change in policy or law.</p> <p>(2) Licensed or certified child care providers may request hearings under this chapter, chapters 170-03 WAC and 34.05 RCW, only for SCC overpayments.</p> <p>(3) To request an administrative hearing, a consumers or licensed/certified provider must <u>make the request as required by WAC 170-03-0050 and 170-03-0060</u> write to the office of administrative hearings at the address in WAC 170-03-0070 within <u>twenty-eight</u> ninety days of the date any decision of an action is received.</p> <p>These changes (to subsection 3) are needed because:</p>	<p>The proposed rule was changed in part as a result of this comment.</p> <p>WAC 170-290-3860 will be revised in the final adoption to read:</p> <p>Right to request an administrative hearing.</p> <p>(1) SCC consumers, licensed or certified child care providers, and contracted seasonal day camps must follow chapter 170-03 WAC to request a hearing.</p> <p>(2) SCC consumers have a right to request a hearing on any action affecting SCC benefits except mass changes resulting from a change in policy or law.</p> <p>(3) Under this part, licensed or certified child care providers or contracted seasonal day camps may request a hearing only for overpayments.</p> <p>(4) A SCC consumer, licensed or certified child care provider, or contracted seasonal day camp must make a request for a hearing as required by WAC 170-03-0050 and 170-03-0060.</p> <p>(a) An SCC consumer must request a hearing within ninety days of the date a decision is received.</p> <p>(b) A licensed or certified child care provider, or contracted seasonal day camp, must request a hearing within twenty-eight days</p>

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<ul style="list-style-type: none">• This sentence doesn't say how providers request hearings.• The 90-day timeframe in this sentence appears to conflict with the 28-day timeframe in WAC 170-03-0050(3).• This sentence oversimplifies the method for requesting a hearing and thereby conflicts with the many requirements in WAC 170-03-0050 and -0060. <p>Change "decision of an action" to "decision."</p>	<p>of the date a decision is received.</p> <p>Note: DEL will also amend WAC 170-03-0050 to reflect the 90-day deadline for SCC consumers to request a hearing so that the hearing rules and SCC rules are consistent.</p>